

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA,)
4 Plaintiff,) Case No. 3:14-CR-267-BR
5 v.) November 5, 2015
6 FABIAN SANDOVAL-RAMOS(1) and RAUL)
7 ARCILA(3),)
8 Defendants.)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

TRANSCRIPT OF PROCEEDINGS
(Jury Trial - Day 3)

BEFORE THE HONORABLE ANNA J. BROWN, DISTRICT JUDGE

COURT REPORTER: AMANDA M. LeGORE
CSR, RDR, FCRR, CRR, CE
U.S. Courthouse
1000 SW Third Avenue Rm 301
Portland, OR 97204
(503)326-8184

1 APPEARANCES:

2 FOR THE PLAINTIFF:

LEAH BOLSTAD
(Assistant U.S. Attorney)
ELISSA GOLOBORODKO
(Certified Law Student)
U.S. Attorney's Office
1000 SW Third Avenue
Portland, OR 97204
(503) 727-1000

7 FOR DEFENDANT SANDOVAL-
RAMOS:

BENJAMIN ANDERSEN
121 SW Salmon Street
1420 World Trade Center
Portland, OR 97204
(503) 222-2510

11 FOR DEFENDANT ARCILA:

ROBERT SEPP
2350 Willamette Falls Drive, Suite 9
West Linn, OR 97068
(503) 998-7719

15 INTERPRETERS:

STEVEN MUZIK
FERNANDO HERRAN

16 ALSO PRESENT:

SUSAN COOKE

INDEX

Witness Index

	FOR THE PLAINTIFF:	<u>Direct</u>	<u>Cross</u>	<u>ReDirect</u>	<u>ReCross</u>
5	Jan Kubic	460	488		
	Jan Kubic		491		
6	Patrick McNair	495	536		
	Peter Olson	540	547		
7	Timothy Miller	548	567		
	Anthony Carley	574	587	588	
8	Joshua Blankenship	589	609	616	617
	Joshua Blankenship		613		
9	Daniel Riley	619	632		
	Daniel Riley		635		
10	Sergio Solis	640	667		
	Sergio Solis		671		
11	Sommer Andersen	672	705		

-oOo-

Colloquy

1 (Thursday, November 5, 2015; 9:20 a.m.)

2
3 P R O C E E D I N G S
4

5 THE COURT: All right. We are on the record, day 3
6 of trial, outside the presence of the jury. Both defendants
7 are personally present with counsel and interpreters. The
8 Government's counsel also present.

9 I understand Ms. Bolstad has not yet proposed a form
10 of instruction regarding this perceived lenity question she
11 would like included in instructions and a verdict form.

12 If I don't have something by near the end of this
13 day, I'm not going to consider it. So if the Government wants
14 me to include that, the time is running short. You need to get
15 a colleague on the issue, so that it can be resolved up or
16 down, whether you're going to ask for it.

17 MS. BOLSTAD: We'll do it, your Honor.

18 THE COURT: All right. Last night, as the jurors
19 were leaving, a juror raised a question with Ms. Boyer about
20 testimony related to Level 38 in the sentencing guidelines.
21 One of the witnesses acknowledged that was the so-called
22 highest level for a drug offense.

23 And Ms. Boyer warned the juror off of trying to do
24 any research or looking into it.

25 I'm concerned that it may be necessary for me to give

Colloquy

1 the jurors some instruction generally about the function of the
2 sentencing process and -- vis-a-vis a plea agreement; when
3 there's a plea agreement and a joint recommendation, what --
4 what does that mean in the context of something like a
5 sentencing guideline offense level. Because that piece of
6 information is a bit out of context. It was just given to the
7 jury. And I don't foresee that any witness on the list is
8 really competent to explain that.

9 And so I want to talk with you about the idea of my
10 simply giving the jury an instruction this morning, before we
11 get going, about the role of a plea agreement in the sentencing
12 process, the fact that there are sentencing guidelines but they
13 are -- the guidelines themselves are never mandatory. They are
14 advisory for a sentencing judge. That when a statute, like the
15 one implicated in Count 1, imposes a mandatory minimum -- as
16 I've already told them and I will tell them again -- mandatory
17 means that. It's the floor of a sentencing range unless the
18 Government opens the door to the possibility of something below
19 and a judge agrees to go below based on a number of factors.

20 And then I would tell them about what the so-called
21 Section 3553(a) factors are. That a judge's duty at sentencing
22 is to impose a reasonable sentence; one that is sufficient but
23 not greater than necessary to accomplish a number of purposes.

24 And that although the parties in a case may have an
25 agreement, that's simply a reference point along with the

Colloquy

1 sentencing guideline reference point, along with these other
2 matters. And, in the end, it is up to the Court to decide.

3 So the fact that an offense level may start at a
4 certain place, Level 38 or otherwise, it is only a factor and
5 not in any way something that determines an outcome.

6 So I'm hoping something like that would set the
7 jurors' curiosity at ease. I want to reinforce the point that
8 they're not allowed to go research these points of interest
9 until after the case. But I want to let you know I'm thinking
10 of doing that. And give you an opportunity to indicate whether
11 you think that's helpful or of a -- of concern.

12 MS. BOLSTAD: For the Government, I do think it would
13 be helpful.

14 My concern would be any time we start talking about
15 3553(a) and departures and levels, it's confusing even to the
16 lawyers who practice it. So I think less is more, but I have
17 no objection to instruction on the point.

18 THE COURT: Along the lines I just described?

19 MS. BOLSTAD: Well, if they're questions about Level
20 38, I --

21 THE COURT: I don't want to go into the range that
22 exists at Level 38.

23 I want to tell them there -- there are sentencing
24 guidelines that are a starting point, and there is a sentencing
25 table that has a Level 38, but that's just a data point that

Colloquy

1 doesn't mean anything other than a starting point.

2 And the real factors that bear on sentencing are the
3 seriousness of the offense, the need to punish, the need to
4 promote respect for the law, the exercise of the Court's
5 judgment regarding what's enough and not too much, in light of
6 mitigating factors like cooperation and a person's personal
7 history and characteristics. So concern -- jurors, don't
8 concern yourself about testimony about a specific level.
9 Consider what the witness was facing before the witness entered
10 into an agreement with the Government. The fact that the
11 Government has opened the door for these witnesses to
12 sentences -- well, first of all, none of the witnesses,
13 anymore, are facing a 20-year mandatory minimum because none of
14 them have pled guilty to that offense. But there are minimums
15 that apply.

16 I'm not going to get into the particulars for each
17 person. But I would just tell them that I understood a
18 question had been raised by a juror after court yesterday,
19 about 11:38, and I want to give them a little information about
20 context. And then tell them not to be concerned with a
21 particular level on a guideline table because the point the
22 jurors must keep in mind, vis-a-vis these witnesses, is that
23 they were facing a 20 -- a charge with a 20-year mandatory
24 minimum. The Government took that exposure off the table in
25 exchange for guilty pleas to certain offenses. And that that

Colloquy

1 is clearly a benefit. And the question the jurors have to
2 evaluate is whether and to what extent that benefit has made
3 the testimony of the witness unreliable.

4 So I would like to -- I would like to make that kind
5 of general instruction to the jury for the reasons I've
6 indicated.

7 Mr. Andersen, your view?

8 MR. ANDERSEN: Your Honor, I think that would be
9 helpful as well.

10 I also echo some of Ms. Bolstad's concerns about
11 giving too much information. But I think the way the Court has
12 described it, it seems like it would be helpful for the jury to
13 know at least, (A), there's a sentencing grid/guideline. And
14 this is sort of how it functions. It's advisory to the Court.
15 And (B), what the factors of sentencing are. I think that's
16 appropriate.

17 THE COURT: And then come back to the point that they
18 should disregard any specific reference to a guideline because
19 we're not going to get into the details of how the guidelines
20 numerically operate. But the fact that a witness knew that the
21 witness had serious exposure is something they should take into
22 account.

23 MR. ANDERSEN: Yes.

24 MR. SEPP: Yeah. Yeah. I'm fine. I don't know if
25 you had this written down or not. But the most recent

1 explanation you gave after this -- the Government made their
2 point, I'm in whole-heart agreement with. I think that's good
3 and helpful.

4 THE COURT: All right. I'll do that.

5 So, apart from the foreseeability issue for jury
6 instructions, have you reviewed draft number -- was it 4? I
7 think. Draft No. 4 of the jury instructions and the verdict
8 forms, which, again, are fluid because we're still not sure
9 about whether there will be a foreseeability question on Count
10 1.

11 If you have proposed changes to those, I would like
12 to review them now. My -- my hope is we're going to get the
13 evidence concluded today.

14 And you should know that I will instruct the jury
15 before closing argument. Before closing argument, they will
16 have a set of the instructions in hand. I invite you to use
17 the instructions when you argue. I invite you to tell the jury
18 how you think the evidence falls and how they should answer the
19 questions on the verdict form. And show them how the law that
20 I'm giving them should direct them to that result based on
21 findings of fact that you think they should make.

22 I -- I think it is helpful for the jury to do this,
23 and that is why I'm giving the law out before, so you have
24 those specific references. That means we need to be very
25 nimble here and ready to finalize the instructions because, for

Colloquy

1 example, if the Government rests today, mid-day or early
2 afternoon, and the defense -- your witnesses are ready,
3 assuming they --

4 MR. SEPP: (Nods head.)

5 THE COURT: If you want to call them?

6 MR. SEPP: Yes. Correct.

7 THE COURT: All right. Then we may have time today.
8 In which case I would go ahead with instruction today and
9 probably move argument to first thing in the morning, so that
10 it's not interrupted.

11 I don't think strategically it's a good idea to let
12 jurors have only one set of arguments and then send them home.
13 And I would like them to have them all in context. But if we
14 have time, I want to take advantage of it today and instruct
15 before we go home. That's why I'm pushing.

16 So with respect to the existing draft 4, and apart
17 from the foreseeability issues, Ms. Bolstad, what changes do
18 you propose?

19 MS. BOLSTAD: Your Honor, so far I don't have any
20 major objections to your instructions.

21 I think that one thing obviously is still to
22 determine, is on page 12; the defendant's decision.

23 THE COURT: Not to testify. Yes.

24 MS. BOLSTAD: Correct.

25 THE COURT: We can't solve that until we know. Yes.

Colloquy

1 MS. BOLSTAD: On page 14, I don't have a correction.
2 I just wanted to alert the court and counsel that this
3 afternoon I do intend to offer a chart and summary. Prior to
4 that time, I will share it with the defense and let them look
5 at it before we have the witness testimony about that summary.
6 It's on the --

7 THE COURT: All right. And your point is if I don't
8 allow the chart and summary, we'll take out the instruction?

9 MS. BOLSTAD: Yes.

10 THE COURT: All right. Mr. Andersen, issues or
11 concerns?

12 MR. ANDERSEN: Your Honor, not -- not besides the
13 ones I've already raised. At this point I don't have an issue.

14 THE COURT: None at the moment?

15 MR. ANDERSEN: None at the moment.

16 THE COURT: All right.

17 MR. SEPP: Same as Mr. Andersen's opinion. No
18 objections. Barring, of course, the foreseeability issue.

19 THE COURT: All right. We'll just stand by, then, on
20 those issues.

21 Who are the first witnesses for the morning,
22 Ms. Bolstad? In the order you gave before? Are you still
23 going --

24 MS. BOLSTAD: The Government intends to call Sergeant
25 Kubic, followed by Detective McNair.

Colloquy

1 THE COURT: Okay.

2 MS. BOLSTAD: And then after those two, those are the
3 substantial witnesses of the morning. After those two, it will
4 move more quickly. I have Deputy Olson, Detective Miller,
5 Deputy Carley, Agent Blankenship, Agent Riley, and then the
6 Government is re-calling Officer Andersen for brief testimony.
7 Actually, it is on the phone. It won't be that brief.

8 THE COURT: I'm also going to ask to the extent a
9 witness is testifying as to a specific count of fact related to
10 a specific count, I encourage all counsel to direct the jury
11 that the questions you're about to ask relate to a particular
12 count. Because we're getting down to the wire now and the
13 issues of what relates to what may be helpful for them to
14 understand. But I'm not trying the case, you are, and you may
15 not want to be specific. But to the extent you want to be
16 helpful to them in tracking your arguments at closing, it does
17 help to lay a marker from time to time.

18 MS. BOLSTAD: Thank you, your Honor.

19 I have two updates for you.

20 THE COURT: Yes.

21 MS. BOLSTAD: The Government has called off two
22 witnesses: Brad Davis and Josh Howell.

23 I alerted the defense to that this morning. They
24 don't see the need for those witnesses either.

25 As to the remaining witnesses, I heeded the Court's

Colloquy

1 instruction. I have pared down significantly the testimony
2 especially of the expert. The expert does not intend to
3 discuss addiction and withdrawal issues. We've covered that in
4 depth.

5 To the extent I ask these other witnesses about
6 observations, my only intention here is that although there was
7 testimony from the co-defendants yesterday about what happened,
8 I need these law enforcement officers to testify to what they
9 saw and heard.

10 THE COURT: Yes.

11 MS. BOLSTAD: So it might sound the same, but it's
12 coming from a very different source.

13 THE COURT: I'm not going to interrupt unless it's so
14 obviously cumulative that I feel the need.

15 MS. BOLSTAD: Thank you, your Honor.

16 THE COURT: But I do appreciate that each witness has
17 an observation. And, in the end, when we're talking about
18 circumstantial evidence of certain facts in particular, those
19 observations may -- may be helpful.

20 THE COURT: Ms. Boyer, will you see if the jurors
21 arrived who were tied up in traffic. And let me know how many
22 we're waiting for, please. (Pause.)

23 MS. BOLSTAD: Your Honor, would you like me to get
24 Sergeant Kubic on the stand?

25 THE COURT: Let me just let you all know that the

Colloquy

1 sergeant's wife is Erica Hadlock, the judge of the Oregon Court
2 of Appeals.

3 At one time she was one my law clerks before she went
4 to the Oregon Department of Justice, before she went to the
5 Court of Appeals. And so I know him in that long-ago capacity.
6 But I don't think I've seen him for years.

7 Just making that point.

8 Go ahead and ask him in.

9 MS. BOLSTAD: Thank you, your Honor.

10 (Pause.)

11 THE COURT: Good morning.

12 THE WITNESS: Good morning.

13 THE COURT: It's been a while.

14 THE WITNESS: Yes, it has.

15 THE COURT: Go ahead and take a seat.

16 We're waiting on jurors. When they come in, we'll
17 all rise. Everyone else will be seated. Then you should
18 remain standing to take the oath.

19 We're going to be giving the jurors some preliminary
20 instructions before you're sworn. Evidently, we're not yet
21 ready with the jurors.

22 Just make yourself comfortable.

23 (Pause.)

24 MS. BOLSTAD: Your Honor, off the record.

25 May I play a call in court before the jury comes in?

Colloquy

1 THE COURT: (Nods head.)

2 (Pause.)

3 THE COURT: Please rise for the jury.

4 (Jurors enter, 8:57 a.m.)

5 THE COURT: You can go ahead and take a seat there,
6 first.

7 Thank you, everyone. Please be seated.

8 Good morning, jurors. Thank you for coming back.

9 Before we continue with evidence today, I wanted to
10 give you a brief instruction concerning the general question of
11 sentencing in federal court.

12 I understand a question was raised after court by one
13 of you about that reference to Level 38. One of the witnesses
14 talked about a sentencing guideline level. So I wanted to give
15 you a little bit of background for context so that you
16 understand what that's about but also to tell you not to
17 concern yourself with specifics about a Level 38 reference, or
18 other things.

19 So here's the general information.

20 In a criminal case in federal court, the sentencing
21 decision is left to the judge. By law, the judge must consider
22 a number of factors in determining what's called a reasonable
23 sentence. The judge must consider is there a mandatory minimum
24 sentence? What is the statutory maximum sentence? And you
25 haven't heard any evidence about maximums in this case, so

Colloquy

1 don't worry about those specifics. But I'm just giving you
2 structure here.

3 Where between a minimum and a maximum a judge
4 sentences depends on a number of factors. One, there is a body
5 of law called the sentencing guidelines. And there are many,
6 many, many rules and regulations a judge must consider.

7 The guidelines are reflected in a table. Some call
8 it a bingo card, literally. It has offense levels and it has
9 criminal history levels across the other axis. And then
10 advisor -- advisory guideline ranges; ranges of sentences that
11 are advisory.

12 I repeat that because the judge's decision is
13 discretionary. It isn't just you're in a box and that's the
14 sentence that is imposed. That is not the law. Yet the
15 guidelines exist, and a judge must consider them as a starting
16 point when considering what the sentence should be. There are
17 a number of factors the judge must take into account for
18 sentencing purposes: The seriousness of the crime; the need to
19 punish, as reflected in the seriousness of the crime; the need
20 to promote respect for the law, to persuade that person not to
21 do that crime again and to the extent news spreads to others,
22 that this is what happens when one engages in that conduct, the
23 hope of deterrence; the need to protect the community, so
24 community safety. Those are certain factors a judge must
25 consider.

Colloquy

1 There are mitigating factors or factors in -- in the
2 interests of lenience a judge must consider. The judge must
3 consider the personal history and characteristics of the person
4 being sentenced, the good in that person's background as well
5 as what led to whatever the act is that was criminal.

6 And the judge must consider whether there are other
7 factors like cooperation, acceptance of responsibility, those
8 kinds of things. And, in the end, the judge decides what is
9 enough but not too much within the ranges the judge is
10 permitted to consider to determine what is reasonable.

11 When there is a plea agreement between the prosecutor
12 and the person being sentenced, what that does is eliminate a
13 lot of issues for the judge to resolve.

14 So let me tell you that without a plea agreement, the
15 prosecutor can come in and argue for any lawful sentence
16 anywhere in the -- from the minimum to the maximum. And the
17 defendant can argue for any lawful sentence between the minimum
18 and the maximum.

19 When they have an agreement, they can argue only for
20 the sentence they've agreed to. So that relieves the judge
21 from having to decide disputes between them. But just because
22 they've agreed to something doesn't make it reasonable. And,
23 in the end, a judge is left with the very solemn responsibility
24 of determining what is enough and what's too much.

25 Now, I give you that with two cautionary things I

Colloquy

1 want to repeat first. Do not consider what sentence I will
2 impose if you find either of the defendants guilty of any
3 charge. You must not do that. Your duty is to evaluate
4 whether the evidence is sufficient to prove beyond any
5 reasonable doubt the charge or charges at issue. You must not
6 allow bias or sympathy or concern for serious consequences to
7 enter into that. You just can't. And I trust you will follow
8 your oath there.

9 But it is important for you to consider sentencing in
10 this general context I've judgment described when you decide
11 whether the agreement the Government reached with each of the
12 cooperating witnesses has affected the reliability of that
13 witness's testimony.

14 We talked about that factor many times, and I know
15 you have it in mind. But because there was this question about
16 a level, I just wanted to put that in context. A level refers
17 to the sentencing table. That's just a starting point, a data
18 point, a piece of advice. It does not control the sentence.
19 That is the judge's duty.

20 It is something you can consider for purposes of what
21 was on the witness's mind when the witness decided to
22 cooperate. And does that affect the reliability of what the
23 witness has said to you, under oath, here in court? That's
24 your call, nobody else's.

25 Does that answer everyone -- anyone's concern about

Colloquy

1 it?

2 All right. Remember, don't -- don't go outside of
3 what's going on in this courtroom to resolve the case. If you
4 have issues that are not resolved, as has been paraphrased back
5 to you, it is either proved or it isn't.

6 Curiosities you have later are certainly available
7 for consideration. And I assure you that once the case is over
8 and your verdict is returned, I'll be happy to answer any
9 questions you have about the process or the issues generally.
10 All right?

11 I also understand there was a question about whether
12 you're going to get a list of the specific charges against the
13 specific defendants. Yes, it will come to you in a number of
14 ways.

15 First, you'll each have a working copy of a verdict
16 form. For each of the two defendants, there will be separate
17 forms with the specific charges against the specific defendant.

18 Remember, Counts 1 and 2 are charged against both
19 Mr. Sandoval-Ramos and Mr. Arcila. Count 1 is the conspiracy
20 to distribute heroin resulting in death. Count 2 is a
21 conspiracy to distribute heroin. It has a slightly different
22 time range, but it overlaps a little bit. And the Government's
23 contention is the object of that conspiracy involved 1,000
24 grams or more of heroin. So that's Count 1 and 2 against each
25 of the defendants.

Colloquy

1 Counts 9 and 10 are against Mr. Arcila -- Mr. Arcila
2 only, and they have to do with possession with intent to
3 distribute heroin on two particular occasions.

4 And I've asked Ms. Bolstad to be sure to -- if she's
5 asking questions about those alleged deliveries, to tie them to
6 the count number by reference, so that you know when the
7 witnesses are testifying today, what that relates to.

8 But you'll have not only verdict forms, you will have
9 my written instructions. And the written instructions will lay
10 out specifically -- each of you will have a set. But the
11 written instructions will lay out specifically: Here are the
12 elements the Government must prove in order for a defendant to
13 be found guilty beyond a reasonable doubt of a certain charge.

14 All elements have to be proved. There are two. All
15 12 of the deliberating jurors have to agree that both are
16 proved beyond a reasonable doubt in order to find a defendant
17 guilty.

18 Any other questions or concerns you have before we
19 continue?

20 Okay. So the Government's ready to continue the next
21 witness. Before you is Sergeant Jan Kubic of the Multnomah
22 County Sheriff's Office.

23 Would you face the jury and the deputy there, please.
24 Raise your right hand to be sworn.

25 (Witness sworn.)

Kubic - D

460

1 THE WITNESS: I do.

2 THE CLERK: Please take a seat.

3 THE COURT: And bring yourself close in to the
4 microphone.

5 Tell us your full name, and please spell all of it.

6 THE WITNESS: My name is Jan Kubic. My first name is
7 spelled J-A-N. My last name is spelled K-U-B-I-C.

8 THE COURT: Thank you.

9 Counsel.

10 DIRECT EXAMINATION

11 BY MS. BOLSTAD:

12 Q. Good morning. Could you tell the jury where you work.

13 A. I work for the Multnomah County Sheriff's Office. I'm a
14 sergeant, and I am running our narcotics investigations unit.

15 Q. How long have you worked at the Multnomah County Sheriff's
16 Office?

17 A. The end of this month, it will be 21 years.

18 Q. And how long have you been the sergeant in charge of the
19 narcotics team?

20 A. I think I'm going on six -- year six or year seven, now.

21 Q. What's your educational background?

22 A. I've got an undergraduate degree in political science from
23 Reed and an Associate's degree in aviation from a now-defunct
24 aviation college in Colorado.

25 Q. As the sergeant with the Multnomah County sheriff's

Kubic - D

1 narcotics team, could you briefly describe your training and
2 experience in law enforcement, specifically about narcotics.

3 A. I've been working in the narcotics investigation function
4 for probably about 15 of my 21 years with the sheriff's office.

5 I've attended ungodly numbers of hours of training,
6 conferences, specialized training for methamphetamine, heroin,
7 cocaine, marijuana, prescription drugs, and -- I apologize.
8 I -- I was up until 4:00 in the morning. We were working last
9 night, so I'm a little punchy too.

10 Q. Okay. So in addition to that training, could you give the
11 jury an estimate of how many narcotics investigations you've
12 been involved in?

13 A. Thousands.

14 Q. Do you have any direct involvement in the investigation of
15 Justin Delong's death in this case?

16 A. No, I do not.

17 Q. Prior to testifying today, did you review any materials?

18 A. Briefly, at your office I -- you showed me a timeline or
19 summary that was generated by one of the investigators; I saw
20 some pictures; and some cell phone text messages.

21 Q. Okay. Have you gotten down into the depths of the police
22 reports in this case?

23 A. Not at all.

24 Q. Okay. So tell us about heroin. Have some of your
25 thousands of investigations involved heroin?

Kubic - D

1 A. Yes, they have. Heroin has exploded in the Portland area.
2 It's probably exploded nationwide.

3 My first tour in dope was from '97 to 2003, 2004.
4 And we had heroin users and we had heroin out here, but it
5 wasn't the same as it has become now, since 2010. It's
6 changed. There is a just a lot more heroin. There are a lot
7 more users. It's readily available, and we're seeing a lot of
8 overdose deaths.

9 Q. Where does heroin come from in the Portland area?

10 A. Ultimately, it's coming up from Mexico.

11 Q. And what does it look like, smell like?

12 A. So typically, you're seeing two different forms of heroin.
13 It's either -- it's called black tar or gunpowder heroin.
14 Black tar is pretty much exactly what it looks like. You know,
15 sort of like toffee-like. And a little harder than toffee,
16 like cold toffee in consistency.

17 Gunpowder heroin is lightish brown to dark brown,
18 powdery.

19 They both have a distinctive vinegary smell.

20 Q. And between those two forms, the powder, and the tar, are
21 there things that dealers can do to go back between those two
22 forms?

23 A. Yeah. You can take powder and warm it up and it will
24 become tar-like, gummy. Once you have got it into tar form,
25 it's a little more difficult. It's easier to cut into powder

Kubic - D

1 form. Once it's in the toffee tar-like form, it's harder to
2 cut.

3 Q. Tell the jury what a user amount of heroin looks like.

4 A. It depends on what sort of user you are, but not much. A
5 beginner user of quality heroin is making looking at a tenth of
6 a gram. And for reference, a gram, if you go to an old-school
7 diner that has, still, sugar packages on the table, one of
8 those little sugar packages is about a gram of sugar. So we're
9 talking an initial use, an initial dose of a tenth of one of
10 those packages.

11 Most users will eventually, if they stay with it,
12 will start increasing their dosage. They'll move to
13 two-tenths, and up. Serious -- a serious user might go up to a
14 gram a day.

15 I've run into people that claim to be doing 2 to 3
16 grams a day. And I think that's probably not true, since
17 that's a lot of dope. So about a gram a day, gram and a half
18 would be at the high end.

19 Q. And let's talk about users -- heroin users. This jury has
20 already heard a lot of evidence about the effects of heroin.

21 My question for you is when you are doing
22 investigations, what are the kinds of evidence you expect to
23 find with heroin users at that lowest level of the chain?

24 A. I expect to find a lot of trash, used bindles. So the
25 bindles of heroin that they're holding onto they're not

Kubic - D

1 throwing out because a low-end user is operating from
2 day-to-day, fix to fix. And they know at some point they're
3 going to run out of money for tomorrow's fix. So a lot of them
4 will hoard all of the little bindles, all of the containers
5 they've bought their heroin with -- in. Because they know when
6 they run out of money or run out of -- or lose their
7 connection, they're going to be reduced to swabbing the inside
8 of those plastic -- bits of plastic, bits of foil.

9 Q. What do you mean swabbing?

10 A. Just that. Take a little piece of cotton, dip it in water,
11 use their thumb, finger, wipe it down, try and collect enough
12 heroin to get a fix out of. At that point they're usually
13 slamming, which is intravenous interjecting it. They're no
14 longer smoking or snorting the heroin.

15 And so I would expect to see a lot of used needles.
16 I expect to see the ubiquitous spoon with a little bit of
17 cotton that's blackened, where they're heating up the heroin.
18 And I would expect to see some kind of, you know, method of
19 tying their arm off. Just everything associated with I.V. drug
20 use.

21 Q. How about cash with low-end users?

22 A. Not -- no. I wouldn't expect to find more cash with them
23 than enough for a couple of days worth of fixes.

24 Q. And then have you encountered heroin dealers who also use?

25 A. Mid-level dealers, yes.

Kubic - D

1 Q. What about at the highest level of the chain? Do you
2 encounter high-level dealers who also use?

3 A. Not who use heroin, no.

4 Q. In your experience in the Portland metro area, are there
5 general patterns about the distribution scheme?

6 A. Yes.

7 Q. And do -- are you familiar with the pyramid scheme?

8 A. Yes.

9 Q. I would like you to explain the pyramid scheme to the jury.

10 Is this scheme something that is across the board for
11 all drugs?

12 A. Yeah. And let's not use the word "scheme" because that's
13 kind of pejorative. Right? It's not a scheme. It's not a
14 scam, in that sense. It's a structure. It's like a business
15 model, like any other model.

16 You have a upper-end distributor or producer, a
17 wholesaler, who distributes to their mid-level resellers; who
18 distribute to, perhaps, a -- you know, the neighborhood
19 resellers who then distribute right down to the street level of
20 resellers. Not unlike Coca-Cola. Right? They produce
21 tremendous amounts of Coca-Cola, and you can go buy a huge flat
22 of Diet Coke at Costco for not much. Nine bucks for 32 cans.

23 And you can take those to your local mom-and-pop
24 store and then resell those cans for a buck fifty a pop; or to
25 your restaurant and resell them for a buck fifty; or you can

Kubic - D

1 take them home and have them much cheaper. But it's that
2 structure that exists within drugs, just like with any other
3 product.

4 Q. Okay. And then within that structure, the product that
5 starts at the top, does something happen to it before it
6 reaches the bottom?

7 A. Yeah, that is the one major difference. You're not getting
8 that nice pristine can of Diet Coke. Somebody has opened that
9 can and maybe mixed something in.

10 So what happens, as the heroin comes into the
11 Portland area, it's fairly close to pure. As in whatever the
12 content is when it was produced in Mexico, it's still in that
13 quantity of heroin.

14 With the gunpowder heroin, what you can do, at some
15 level you're going to start what we call stepping on it or
16 cutting it with some -- with a cutting agent.

17 So you can start out with, say, a pound of pure
18 heroin, and step on it once, which would mean cutting it with
19 another pound of cutting agent. So now you have two pounds of
20 product, but it's only 50 percent pure if it was 100 percent
21 pure to start.

22 And it depends how many times it's been stepped on,
23 by the time it gets down to the street level, which determines
24 how good of a high you get out of that.

25 Q. Okay. Sergeant Kubic, you've talked about pounds and

Kubic - D

1 grams. I would like to go through some quantities with you.

2 And before I show the jury this item, I want to just show you
3 and have you walk through this. Okay?

4 A. Okay.

5 Q. I'm going to show you what has been marked as Government
6 128.

7 MS. BOLSTAD: It should not come on the screens.

8 BY MS. BOLSTAD:

9 Q. Sergeant Kubic, can you see that?

10 A. I sure can.

11 Q. Okay. So how many grams are in an ounce?

12 A. 28.35.

13 Q. And are you familiar with the term "piece"?

14 A. Yes.

15 Q. What is a piece?

16 A. So when you're dealing in heroin in this part of the world,
17 you're not dealing in ounces, per se. When you're buying or
18 selling ounces, you're dealing in what's called a piece. And a
19 piece is 25 grams.

20 So it's a -- sort of an attempt to take the metric
21 system and force it into our -- our U.S. system.

22 So instead of a 28.35-gram ounce, if you ask for a
23 piece -- or also it's called on the street a Mexican ounce --
24 you're only really getting 25 grams.

25 Q. How many ounces are in a pound?

1 A. 16.

2 Q. And how many grams, then, are in a pound?

3 A. 454-ish.

4 Q. And can you look at 128 here.

5 Does this chart accurately capture those quantities
6 you're talking about?

7 A. It does.

8 Q. And at the bottom of the left conversion chart, do you see
9 the entry for 1,000 grams?

10 A. I do.

11 Q. How many pieces or Mexican ounces are in 1,000 grams of --
12 of anything?

13 A. 25 -- 40.

14 Q. And how many pounds are in a kilogram?

15 A. 2.2.

16 Q. Now, let's talk about some pricing data, and we'll -- we'll
17 go through this on the chart before we show the jury.

18 What are some typical dealer quantities that you've
19 encountered in narcotics investigations?

20 A. So we'd have to preface that with what level dealer are we
21 talking about.

22 Q. What's the lowest-level dealer quantity in your opinion?

23 A. What's called an eight-ball, which is one-eighth of an
24 ounce or about 3.5 grams.

25 Q. How about -- let's talk about pricing, then.

Kubic - D

1 So you've talked about 1 gram and the sugar packet.

2 What would 1 gram cost on the streets of Portland?

3 A. Right now, running about 80 dollars to a hundred dollars
4 per gram.

5 Q. And what about an eight-ball?

6 A. 250 for an eight-ball.

7 Q. How much is one piece of heroin?

8 A. That depends on your connection. It depends how far up the
9 chain you're going to buy that piece. It can run anywhere from
10 800 to 1200 in the Portland area. It gets more expensive the
11 further outside Portland you get.

12 Q. And does it get less expensive if you have a good
13 connection?

14 A. If you have a good connection, and you're able to buy in
15 bulk, yes, it does.

16 Q. You mentioned buying in bulk. Is it cheaper to buy in
17 bulk?

18 A. Absolutely. Just like Costco.

19 Q. How about one -- I'm sorry. How about 8 ounces of heroin?

20 A. Again, depending on your connection, 6,000 to 9,000
21 dollars.

22 Q. Finally, a pound. How much would that cost on the street?

23 A. You -- they're getting expensive. Pounds are upwards of
24 16,000 a pound, nowadays.

25 Q. And then how about one kilogram, which is 2.2 pounds? How

Kubic - D

1 much would that sell for -- or, I'm sorry, how much would you
2 buy that on the street?

3 A. So that's running -- depending on the quality now -- so
4 32,000 at the low end. We've seen it as high as 40,000 for
5 fairly -- probably completely uncut heroin.

6 Q. 40,000 dollars?

7 A. Um-hmm. Yes. That's correct. We've been quoted that
8 recently.

9 Q. Okay. And so does this Exhibit 128, does this accurately
10 capture what you've gone through?

11 A. It does.

12 MS. BOLSTAD: And, your Honor, I would like to offer
13 what's been marked as Government's 128.

14 THE COURT: As a summary?

15 MS. BOLSTAD: Yes, your Honor.

16 THE COURT: Objections? No?

17 MR. SEPP: No.

18 MR. ANDERSEN: No, your Honor. I believe he's
19 testified to that.

20 THE COURT: The exhibit may be received, published.

21 And then, jurors, this is just a summary to aid you
22 in recalling the testimony. The actual evidence is the
23 witness's testimony, not the document.

24 Go ahead.

25 MS. BOLSTAD: Thank you, your Honor.

Kubic - D

1 JUROR NO. 10: Judge, could I get some tissue.

2 THE COURT: Tissue, yes.

3 BY MS. BOLSTAD:

4 Q. All right. Sergeant, I'm going to ask you about 8 ounces.

5 All right?

6 A. Yeah.

7 Q. How many grams are in 8 ounces?

8 A. 200 -- well, look. I'm sorry. Let's back that up. If
9 we're talking --

10 Q. Oh, pieces. Thank you.

11 A. 200.

12 Q. And so when we're talking about eight 25-gram quantities,
13 that's like 200 grams?

14 A. That's correct.

15 Q. And you've testified that that could run anywhere from --

16 A. Yeah, 6 to 9,000.

17 Q. Okay. Assuming that there are -- assume a user who uses
18 .2 grams of heroin as a user quantity. And so, therefore,
19 assume there are five user quantities in a gram. Are you with
20 me?

21 A. Um-hmm.

22 Q. How many user quantities would then be in 8 ounces of
23 heroin?

24 A. I'm sorry. I would be able to rattle this off the top of
25 my head if I had had more than two hours of sleep. But since

Kubic - D

1 I'm on the stand --

2 Q. Do you have a calculator?

3 A. And we're doing word problems. So eight times 25.

4 200. And we're saying two-tenths -- well, two-tenths
5 of a gram, that would be a thousand doses.

6 Q. A thousand doses in 8 ounces?

7 A. That's correct.

8 Q. I won't ask you about when a bus leaves New York,
9 Mr. Kubic, okay?

10 A. Okay.

11 Q. So based on your training and experience then, would an
12 8-ounce quantity be consistent with a distribution quantity or
13 a possession, a user quantity?

14 A. That would be a distribution quantity.

15 Q. Okay. Let's move on to the manufacture of heroin.

16 Earlier you talked about diluting heroin as it goes
17 down the pyramid.

18 A. (Nods head.)

19 Q. Are you familiar with cutting agents that are typically
20 used with heroin?

21 A. I am.

22 Q. Tell the jury about what you have seen.

23 A. So for the gunpowder heroin, it's real easy to cut it with
24 another powdered substance since gunpowder heroin is kind of
25 brown in color, almost mocha colored. I've seen coffee

Kubic - D

1 creamer. I've seen mocha-flavored coffee creamer used.

2 You could probably use flour. You can basically use
3 anything that's going to be a light powdery substance that's
4 not going to harm your end user too much.

5 Lactose is one of the products that's used.
6 Typically when we're getting to places where cutting agents are
7 used, they're -- most folks will have their favorite cutting
8 agent that they're using just because they know that works, and
9 they like it.

10 Q. Have you seen sugar used as a cutting agent?

11 A. I have. Sugar is used. Sugar -- especially if they're
12 dealing with some black tar because you can -- you can heat the
13 sugar up, caramelize it, and it sort of looks like black tar
14 when you try to mix it. It doesn't work that well, but it does
15 work.

16 Q. And then you mentioned lactose. What is lactose?

17 A. It's a milk sugar. And you can buy it on line. You can
18 buy it in health food stores. I think people add it -- I'm not
19 a parent, but I understand people add it for kid's formula.
20 It's commonly used in the pharmaceutical industry in pills
21 because it doesn't add much taste. It binds whatever your
22 active ingredient is in its closest form.

23 Q. I'm going to show you what's marked and admitted as
24 Government's 112.

25 Do you know what this is?

Kubic - D

1 A. It's a lot of bags of lactose.

2 Q. Okay. Have you ever -- in your thousands of
3 investigations, have you ever seen this particular brand of
4 lactose?

5 A. No, I have not.

6 Q. Okay. And does that mean, then, it's not used in heroin
7 dilution?

8 A. Not at all.

9 Q. Tell the jury what you mean.

10 A. I think I've mentioned everybody's got their favorite cut,
11 what they know works. And there's a lot of sources for lots of
12 different cuts.

13 Lactose, a lot of people sell it. Obviously, whoever
14 is using this lactose likes it, is buying it in bulk. Just
15 like everything else, it's probably cheaper in bulk. And
16 that's part of their signature product.

17 Q. Okay. Have you and your team executed search warrants at
18 stash houses?

19 A. We have.

20 Q. What is a stash house?

21 A. A stash house -- what we call a stash house is either a
22 house or an apartment that is typically pretty vacant. Its
23 primary use is to hide your drugs and your cash.

24 You can also use that place to what's -- go count
25 your money, to get it ready to ship south, to cut up -- to --

Kubic - D

1 to cut up and package your drugs to get ready to push out to
2 the street, or to your next distributor below you. A place to
3 go hang out when you don't want to be at home.

4 Typically really sparsely furnished. You know, maybe
5 a mattress or two, some blankets, a couple of tables. Maybe a
6 few seats, a couch, possibly a TV. Not much else.

7 Q. And do people live at stash houses?

8 A. Occasionally we've seen organizations that are rotating
9 people through the Portland area. As individuals within their
10 organization get arrested or get heated up in a different city,
11 they'll bring them to Portland, and vice versa. They'll ship
12 them out of Portland. And they'll often put them up in the
13 stash house. One, because they have a place that's available.
14 And, two, they recognize that having somebody who seems to come
15 and go on relatively normal business hours makes the place look
16 more realistic to the neighbors and also provides a level of
17 security for their products.

18 Q. And when you and your team have done search warrants at
19 stash houses, what are you looking for in a drug case?

20 A. We're looking for drugs, cash, scales, packaging material,
21 old packaging material, stuff that's been -- so the big kilo
22 wrappers or the pound wrappers that have been just discarded
23 somewhere. We're looking for drug records. Even though most
24 people communicate electronically, the bulk of the dealers that
25 I've interacted with over the years still maintain some sort of

Kubic - D

1 paper ledger. It's just simpler to scratch the numbers and
2 names on a piece of paper than it is to type it into your
3 smartphone. Weapons, we expect to find weapons, or we're not
4 surprised when we find weapons. We're finding more and more
5 weapons nowadays. Cell phones. Lots of old cell phones. Lots
6 of times they're dumping phones. The phones fail, they just
7 throw them in a drawer.

8 Q. What about defense measures at these houses?

9 A. We'll find those. Barricaded doors, surveillance cameras,
10 barricaded internal doors, extra locks on doors inside of
11 apartments or houses.

12 Q. All right. Sergeant Kubic, you've talked to us about
13 pyramid structure distribution. I'm going to ask you now to
14 describe the dispatch model.

15 Are you familiar with that term?

16 A. Yes, I am.

17 Q. Tell the jury what -- what a dispatch model is.

18 A. So a lot of organizations, when they get larger, are no
19 longer necessarily having -- they have moved away from the
20 owner/operator model. Be a way to look at it.

21 Smaller dealers will go buy their product, and then
22 they personally will take all of the phone calls, requests
23 for -- for heroin, for whatever they're selling and then
24 they'll go make arrangements to deliver that product to their
25 customers.

Kubic - D

1 As an organization gets larger, they're going to move
2 away from that model, and they'll have a person that becomes a
3 dispatcher. Somebody who sits somewhere -- can be anywhere,
4 nowadays, with a cell phone. And that phone number is the
5 phone number that is given out to the customers.

6 A person calls that phone, tells them who they are
7 and what they want; or texts that phone, tells them who they
8 are, what they want and where they want to meet. The
9 dispatcher will figure out where -- where and when to have
10 somebody meet them. Will tell the customer where to go. And
11 then will oftentimes use a separate phone to call their
12 runners, the people working for them; and tell them where to
13 go, who they're going to be meeting, and how much to supply
14 with, and what price to expect in return.

15 Q. In that model of the dispatch organization, are there -- is
16 there a role for people who transport drugs?

17 A. Yeah. Yeah. So you'll -- you'll have -- when an
18 organization gets to the point that it can work the dispatch
19 model, it may still be buying their -- their drugs from a
20 different organization that just specializes in bringing the
21 drugs up to this area. But they may grow and like -- we've
22 seen this happen a number of times -- to the point where they
23 can establish a direct connection to Mexico or to Southern
24 California, and they'll send their own people to pick the drugs
25 up and bring them up. So a person will be, (A), a transport

Kubic - D

1 person.

2 And, again, that saves them money because they're not
3 having to buy from Costco. Instead, they're now buying
4 directly from Coca-Cola, and so cutting out one of the
5 middlemen.

6 Q. What are the business benefits to the dispatch model?

7 A. There's a lot of benefits to the model. It provides the
8 ability to be very flexible in that the dispatcher can be
9 anywhere.

10 And your runners, your delivery people can be mobile,
11 can be anywhere. Provides you with security because of that,
12 if the dispatcher never touches the drugs or the money; which
13 we see a lot of. They just sit somewhere. They're making
14 calls and passing calls on. Then if law enforcement tracks
15 that phone number -- say we find somebody who tells us, This is
16 the number I call for drugs. And we get a ping order up on
17 that phone. And we find out where it is, and we make contact
18 with that person; they're going to be, to all external
19 purposes, clean. They won't have any drugs on them. They
20 won't have any money on them. They won't have any weapons.

21 They may have a job that they're working already and
22 just handling this phone on the side. But they're -- they're
23 calling the shots and making things happen. And they have more
24 customers that way. You can handle a lot more customers if you
25 have runners and you're not the one going out on the street,

Kubic - D

1 making these individual deliveries.

2 Q. And so in that model, is the dispatcher taking the calls --
3 in your experience, does that dispatcher ever interact with
4 customers?

5 A. Typically not when it gets to that level. They may have at
6 one point in the game. They may have been that street-level
7 person that has worked -- built their business to the point
8 that they can hire some people to start doing street level
9 deliveries and they can move up.

10 Q. You mentioned -- so, moving up?

11 A. Absolutely. Moving up. So if you -- if you start out as a
12 small-time dealer, it's really -- it really isn't that much
13 different than -- than running a small ma-and-pa grocery or
14 convenience store. Right? You start out and you're on
15 location. You have a limited customer base. And for whatever
16 reason -- perhaps the population density gets bigger where
17 you're at, your customer base starts to grow and one day you
18 decide, you know, I can probably afford to open up a second
19 store.

20 And all of a sudden, one day, you're no longer in the
21 store behind the counter. You're in an office somewhere and
22 you're handling inventory and moving -- shipping it out to
23 different stores and having it all happen.

24 Exact same thing happens in the drug world. At some
25 point you no longer need to go out and make the deliveries.

Kubic - D

1 You have people making deliveries for you. And you're
2 essentially brokering deals, making the connections, and making
3 sure that the accounts balance.

4 Q. And what if -- what if one person in that organization, the
5 dispatch organization, gets arrested?

6 A. Yeah. It depends on where they get arrested.

7 So in Multnomah County, for instance, if we arrest
8 somebody for -- say they've got a couple of ounces of heroin on
9 them and they have no prior record. They have no person crimes
10 associated with it. It's just a simple distribution of a
11 controlled substance arrest. They're going to go to jail.
12 They'll get photographed and fingerprinted. They'll get booked
13 in. And odds are, in less than 24 hours, they will be recogged
14 out. They will be released. They'll have an address that they
15 can give, somewhere they live. They'll have a phone number,
16 possibly a place that they claim they're working, and they'll
17 be out on the street.

18 And with a -- and that's what we're seeing with these
19 larger dispatch models where I was talking about moving people
20 around. When that happens to one of their people, the answer
21 for these organizations is to move them to a different city,
22 where they've got the exact same set up.

23 Q. And when that person is moved to a new city, does he fill
24 somebody else's role, how does that work?

25 A. If he was -- let's assume he was a street -- he's

Kubic - D

1 delivering on -- out on the street. And he'll probably step
2 right into that role in the next city. And just -- they'll
3 give him a phone, give him a car, supply him possibly with a
4 crash pad, and put him to work.

5 Q. And in that new city --

6 A. Um-hmm.

7 Q. -- does the person need to develop a new customer base?

8 A. No, no.

9 Q. Why?

10 A. The franchise is already there, the company's already
11 there. It's like Domino's. Right? If you're a Dominoes
12 delivery guy, then you move from Portland to Eugene and you
13 want to work for Domino's. And you have a good history with
14 the franchise over in Portland, and perhaps that franchise
15 owner even owns the franchise in Eugene. They'll hire you.
16 And they'll put you to work in Eugene. And you, as the
17 delivery guy, you're not worried about who the customers are.
18 You're just taking direction and going and delivering pizzas.

19 Q. And in this model, when you're new, do you introduce
20 yourself to your new customers?

21 A. Some do, some don't. Yeah.

22 Q. And what do those introductions typically look like in the
23 drug world?

24 A. Very cursory. Nicknames. A lot of nicknames. Flocko,
25 Gourdo, Quero. Yeah. Names that reflect some sort of personal

Kubic - D

1 attribute of the person doing the delivery.

2 Q. Let's talk about how the product gets to Portland in the
3 first place.

4 How does this heroin arrive here?

5 A. The bulk of it that we're aware of is being driven to
6 Portland. Coming up I-5, coming up 97, in what we call load
7 cars.

8 So cars that occasionally have what we call a trap.
9 So an actual hidden compartment. Or it's built and designed to
10 hide their drugs. Also, they'll use a lot of natural voids in
11 cars; areas that the manufacturer leave open but accessible,
12 where drugs can be hidden in.

13 Some organizations will go farther than that and hide
14 drugs in stuff like drive shafts. They'll actually drop the
15 drive shaft off the vehicle, cut it open, fill it with dope,
16 weld the drive shaft back, put it on. False gas tanks. You
17 can -- you can be pretty creative, as far as hiding drugs in
18 vehicles, and you can put a lot of dope in a car.

19 Q. Have you ever seen dope in an airbag compartment?

20 A. Yeah, that's -- that's fairly typical. Passenger side
21 airbag, pull that out, and replace the airbag. It's a huge
22 void. Great place to hide dope.

23 Q. And then are you familiar with certain things that
24 transporters and dealers can do to -- besides traps, to sort of
25 hide the idea that they have dope?

Kubic - D

1 A. Yeah. Masking agents. You know, lots of little, what we
2 call -- police technical term -- the felony forest. It's when
3 you see somebody that's driving along and they've got 12 air
4 fresheners hanging -- the little tree -- trees hanging from
5 their rearview mirror. I find that a little overwhelming, but
6 we see that all the time.

7 You'll stop a car, and there will be dryer sheets
8 spread throughout the car, unused dryer sheets. Detergent,
9 just spilled on the floor, in the trunk, on the seats. They
10 wrap the -- they wrap their drugs in plastic, put it in -- use
11 Seal-A-Meals to evacuate it. Wrap that in axle grease, pepper,
12 another layer, yet another layer.

13 Q. Why all the smells?

14 A. All the smells, they're worried about dogs primarily. But
15 heroin has also got a very distinctive odor. It's a strong
16 vinegary smell. And once you've smelt it once -- you stop the
17 vehicle and you smell that overwhelming order of vinegar coming
18 out of it, and you've got some other indicators as well, you
19 probably know what you've got.

20 Q. Finally, Sergeant, I want to talk about the phones.

21 A. Okay.

22 Q. Is it common to see drug dealers with one phone or more?

23 A. Multiple phones is common.

24 Q. Why?

25 A. Typically they will have a personal phone and a work phone

Kubic - D

1 and possibly multiple work phones, depending on their level
2 within the organization.

3 Q. Are you familiar with the idea or concept of a burner
4 phone?

5 A. Yes.

6 Q. Is that also known as a track phone?

7 A. Track phone is a brand of phone that's used as a burner
8 phone.

9 Q. And what is a burner phone?

10 A. Burner phone is a cheap phone that's not going to be easily
11 traceable to use. Something that you can go into 7-Eleven, put
12 cash down, get a cell phone with some minutes on it and a phone
13 number. And short of us getting lucky figuring out where that
14 phone was purchased, going back to that store within the two
15 weeks to 30 days max that they would maintain video
16 surveillance and getting that video surveillance to actually
17 work and downloading it and figuring out who bought that phone,
18 by the video -- which would probably not be great -- there's no
19 way to figure out who owns that phone.

20 Q. And so when somebody buys a track phone, for instance, at
21 7-Eleven or KMart, whatever, do you have to register your track
22 phone or pay a bill for it?

23 A. You have different ways of doing that. The companies would
24 like you to register online and connect a credit card to it and
25 so they can start up-selling you. But you can do simple things

Kubic - D

1 like going back to the place, or other stores that specialize
2 in that, in selling them, and just buying additional minutes
3 for cash. You essentially get a card that you enter some
4 numbers into the phone and now you've -- you've -- you've
5 topped off your phone.

6 Q. As a narcotics investigator is there certain techniques you
7 have to investigate cell phones before you have the cell phone
8 in hand?

9 A. Yes.

10 Q. So before you seize a phone from a dealer, for example --

11 A. Yes.

12 Q. -- what are the things you can look at?

13 A. So you can subpoena phone records and -- for a cell phone.
14 And depending on your cell service provider, what you should
15 get back is call origination, call destination.

16 So what number got -- was -- what was the phone that
17 was used? Which is what you're asking for. What number did
18 that phone call -- it will tell you what time that call started
19 and what time that call ended. It will tell you -- again, this
20 depends on cell service provider -- where that phone was when
21 it started the call and where that phone was when the call
22 ended.

23 So -- and it may tell you that based on just cell
24 tower location, which is a general area. It may give you GPS
25 location, which is very specific. But what you'll see is if

Kubic - D

1 the phone's moving -- you know, the phone call could start in
2 Portland, and it's a long call and maybe it terminates in
3 Troutdale. And so you would see that.

4 Q. And looking at those kinds of records, before you even have
5 the phone, are you able to look at patterns that a call is --
6 is using?

7 A. Yeah, call pattern analysis, link analysis. There's
8 software out there that will do that for you. But, yes, you
9 look for frequent calls. Is there some numbers that are called
10 often? If you know some users or phone numbers, so you know
11 that somebody's calling to order up and you see the call come
12 in consistently and then another number being consistently
13 dialed out. And then the call going back to the user or the
14 text going back to the user. Well, actually, you wouldn't --
15 you wouldn't see texts. I take that back, on -- on those type
16 of call records. But a call going back to the users, then you
17 can start drawing conclusions about what the intermediate call
18 is about.

19 Q. And so why can't you see text messages in these call
20 records that you subpoena?

21 A. Because the phone companies maintain call records not for
22 us but for themselves; to track, one, their billing and, two,
23 how their service is working.

24 The phone companies need to be able to bill each
25 other for the use of the towers. And they need to be able to

Kubic - D

1 bill the customer. And if the customer is griping about their
2 bill, they need to be able to tell the customer what that bill
3 was. Texts don't fall into that structure with the phone
4 companies, so they don't track texts at all on those kind of
5 records.

6 Q. So how about after you seize a cell phone in a narcotics
7 investigation? What are some things you can do with a seized
8 phone?

9 A. With a seized phone, depending on the encryption and
10 whether it's a locked phone or not, you can -- what we call --
11 dump the phone. There's hardware and software available that
12 you can plug the phone into. Essentially a computer. And it
13 will take all of the data out of the phone. It will capture
14 all of your text messages that are stored on the phone. And
15 those of you who may have a smartphone, especially if you pull
16 up your text message history, many of us will have text
17 messages between friends and family that go back as long as
18 you've had that phone. You can just go back and look, right?
19 If that's there and it's not locked, then likely we can access
20 that and see all of that history.

21 Q. Contact lists?

22 A. Yes. We can see the contact list.

23 Q. Photographs?

24 A. Yep. Pretty -- long/short of it is anything you can see on
25 that phone, if we can access it, we can get it onto a computer,

Kubic - X

488

1 and pull it up take a look.

2 Q. And so when you say "dump," you don't mean throw the phone
3 out, do you?

4 A. No, no. It's just a term of art. When you plug the phone
5 into the cable and it starts dropping the data on to your PC.

6 Q. Okay. Sergeant Kubic, final question.

7 If you don't seize a cell phone in an investigation,
8 are you still able to obtain those records you described?

9 A. The records from the phone dump?

10 Q. No, the records from the phone company.

11 A. Yes. The phone company records, providing you get on it
12 soon enough and they still have them, yes, you can get those.

13 Q. And have you encountered thrown-away phones in your drug
14 investigations?

15 A. All the time.

16 Q. And sometimes have you still been able to find evidence
17 from phone companies about those phones?

18 A. We have.

19 MS. BOLSTAD: Nothing further on direct.

20 THE COURT: Thank you.

21 Mr. Andersen.

22 MR. ANDERSEN: Thank you.

23 CROSS-EXAMINATION

24 BY MR. ANDERSEN:

25 Q. I've got a few questions Mr. -- or Sergeant Kubic.

Kubic - X

1 Now, you talked a little bit earlier about load cars
2 or about transportation that might be employed by -- by people
3 in the organization you were describing.

4 And you talked a little bit about some of the, I
5 guess, markers you might -- you might look for if you stop a
6 car or if you do something like that. You mentioned the trees,
7 the dryer sheets, things like that.

8 Are there any other indicators that might indicate to
9 you that -- or an investigator that there's suspicion -- or
10 that would up somebody's suspicion?

11 A. There's -- there's so many -- there are tons of indicators.

12 Everything has to be viewed in context and -- and
13 what's going on at that stop and what your history is. If --
14 if this is a stop of somebody that you have some background on
15 and -- and you have some intelligence on versus just if it's a
16 cold patrol, just pulled you over for speeding and starts
17 noticing stuff.

18 Q. Well, let's say it's a cold stop, like you're saying. You
19 noted some of those issues.

20 Are there any other sort of issues, that are sort of
21 baseline?

22 A. Absolutely. You're looking -- if somebody's nervous --
23 excessively nervous, if you have multiple people in the vehicle
24 and there are stories, as you're talking to them, engaging them
25 in conversation, if their stories are very consistently -- or

Kubic - X

1 considerably different. Loose portions of the vehicle in a
2 newer vehicle. A vehicle that doesn't add up where the
3 destination is versus where it's coming from or where it's
4 registered.

5 Yeah. There's -- there are many things to explore.

6 Q. What about things like registration? Is there anything
7 about registration that would --

8 A. Sure. So tip -- a lot of load cars are rental vehicles.
9 So you have somebody who's driving the vehicle, who is not the
10 person who rented the vehicle. Same thing. You had somebody
11 driving a vehicle and it's not registered to them. They don't
12 know who the registrant is. You ask them about who the
13 registered owner is, they don't know. So inconsistencies.

14 Q. Okay. So if the driver's not the registered owner, that's
15 an issue.

16 What about license plates, anything like that?

17 A. Okay. I --

18 Q. I -- I'm just asking generally, if the license plate, for
19 example, came back to a different car, that might be --

20 A. Oh, that -- that now is a completely -- well, that is an
21 issue, but that also escalates us into thinking perhaps it's a
22 stolen vehicle. So you may not -- not have a load car. You
23 may have some other criminal activity.

24 Basically, good police work on the side of the road,
25 when you're -- when you've pulled someone over for speeding is

1 what doesn't fit? And it's -- there's no universal to tell you
2 what fits every time because it's the big picture. It's the
3 context.

4 Q. Okay. And you also, I think you were -- you were saying
5 earlier about -- you talked about people that might come into
6 town and sort of jump into an already running organization.

7 I mean, would you agree that those people would want
8 to try to maintain -- would not want their identity to be
9 publicly revealed? I mean, you said they obviously didn't
10 introduce themselves with their names, or anything like that.
11 Right? Is that --

12 I'm not sure if that question really is much of a
13 question. Let me rephrase it.

14 I mean, you're -- in general, in these types of
15 organizations, would you agree that the people that are
16 involved would want to maintain anonymity to whatever extent
17 they could?

18 A. Absolutely.

19 MR. ANDERSEN: That's all I have. Thank you.

20 THE COURT: Counsel.

21 MR. SEPP: Thank you, your Honor.

22 THE COURT: Excellent.

23 CROSS-EXAMINATION

24 BY MR. SEPP:

25 Q. Good morning, Sergeant.

Kubic - X

1 A. Good morning.

2 Q. I've had some issues with the microphone the last couple
3 days.

4 Okay. Now, going back to just talking right now and
5 focus attention on the multiple cell phones. And the purpose
6 of that is so that one doesn't interact with the other,
7 business and personal?

8 A. There is -- there is business and personal issues. There's
9 also the -- the concern that if we, in law enforcement, go up
10 on one phone, that we don't, it doesn't open up the entire
11 network to us. And that if you're using multiple phones, you
12 could have one personal phone; you keep everything out of that,
13 that's clean. And then you might have multiple work phones.
14 So one phone to communicate if you're -- if you're the dispatch
15 center. One phone to communicate with customers. One phone to
16 communicate with your -- your runners out in the field. I've
17 seen organizations where they even assigned each runner a
18 separate phone, and dispatch will have separate phones for each
19 runner.

20 So they're compartmentalizing it as much as possible.
21 Basically, a cell structure, not unlike a terrorist
22 organization. The more you cellularize it, the more difficult
23 it is for us to figure out how it all connects and who all is a
24 part of it.

25 Q. And would that purpose be frustrated if you -- the second

Kubic - X

1 phone had the same phone number as the first?

2 A. Well, the -- if both phones have the same number, that's --
3 they're the same phone. It doesn't -- if I have two phones, as
4 far as the -- yes, you have two physical devices.

5 But if you have two physical devices with the same
6 phone number, only one of those is really going to work.
7 Right? Like when you upgrade from your old phone to a new
8 phone, for some period of time you have two phones with the
9 same number, but the reality is only one of those two work
10 because you only brought one online.

11 Q. Right. So that would just in essence be one phone?

12 A. Correct, one phone.

13 Q. And the idea of the burner phone that you can buy at the --
14 well, almost anywhere, now.

15 A. (Nods head.)

16 Q. That is so that it cannot be traced. Correct?

17 A. That makes it -- that -- that is -- whether it's being used
18 for that or not, that is certainly, for some people, a feature.

19 Q. And, again, that purpose would be frustrated if on your
20 phone you were carrying a multi -- a long-term contract?

21 A. Well, it --

22 Q. If a phone user had a long-term contract --

23 A. Right. Then it's not -- they're not -- they're frustrating
24 themselves if their goal was to stay anonymous.

25 Q. And now in telling a little bit about the stash house --

1 A. Um-hmm.

2 Q. -- in your experience, have you ever encountered a stash
3 house where they had -- had people living there that were just
4 regular people not associated with the dope organization?

5 A. Yes, I have.

6 Q. And just a couple more, and these are going to be very
7 obvious.

8 Now, you described the hidden compartment. Now, a
9 good hidden compartment, then, is hard to find?

10 A. By definition, yes, sir.

11 Q. Yes, I know, lawyers' questions.

12 And very -- and the object is to make sure that no
13 one can see it, so the drugs aren't discovered?

14 A. Absolutely.

15 MR. SEPP: That's all I have.

16 THE COURT: Redirect?

17 MS. BOLSTAD: Nothing your Honor.

18 THE COURT: Thank you, sir. You're free to go.

19 MS. BOLSTAD: Government calls Pat McNair.

20 THE COURT: Thank you.

21 Good morning. Please face the jury and deputy there.

22 Raise your right hand to be sworn.

23 (Witness sworn.)

24 THE WITNESS: I do.

25 THE CLERK: Please take a seat.

McNair - D

1 THE COURT: Bring yourself close to the microphone,
2 please. Tell us your full name, and spell all of it, please.

3 THE WITNESS: Sure. It's Patrick Allen McNair. It's
4 P-A-T-R-I-C-K, A-L-L-E-N, M-C-N-A-I-R.

5 THE COURT: Thank you.
6 Counsel.

7 DIRECT EXAMINATION

8
9 BY MS. BOLSTAD:

10 Q. Good morning.

11 A. Good morning.

12 Q. Would you introduce yourself to the jury.

13 A. Again, I'm Patrick McNair. I'm a detective for the City of
14 Beaverton, and I'm assigned to the West Side Interagency
15 Narcotics team.

16 Q. Is that the WIN team?

17 A. Correct. The WIN team for short.

18 Q. How long have you worked on the WIN team?

19 A. Approximately three-and-a-half years.

20 Q. And how long, overall, with the Beaverton Police
21 Department?

22 A. Since 2006. So just shy of ten years.

23 Q. What type of law enforcement training have you received?

24 A. I attended the police academy in the state of Florida,
25 where I was a certified police officer. That was after I

McNair - D

1 graduated from college with a Bachelor's degree in criminology
2 and sociology.

3 I then completed the field training program with the
4 Collier County Sheriff's Office in Florida where I worked for
5 approximately 18 months before I moved out here to Oregon and
6 was hired with the Beaverton Police Department.

7 After being hired with Beaverton Police Department,
8 I -- I attended the Florida State Police Academy -- I mean, the
9 Oregon State Police Academy. I graduated from there. I also
10 did a field training program with the Beaverton Police
11 Department.

12 That's where we're assigned a training officer to
13 ride with who's going to be teaching you the ins and outs of
14 what you're doing. After that, specific to drug
15 investigations, I did a period of four months where I worked
16 with the WIN team, in what we called the WIN emersion training.
17 So they took me off patrol and let me work with the WIN
18 investigators. And that was in 2010.

19 And so I had four months of actually being involved
20 in, you know, these investigations and actually being able to
21 help and learn while doing.

22 I did the FTAP program with the WIN team. And,
23 again, that's when you come over to the WIN team, you're
24 assigned somebody to walk you through the training program.
25 You know, teach you each different aspects of the drug

McNair - D

1 investigations and make sure that you've been introduced to as
2 many aspects as possible.

3 I've completed the detectives academy through the
4 state of Oregon. That was a 40-hour class which just covers
5 the basics of investigations in general. It touches on drug
6 investigations but it's also persons crimes.

7 I'm a member of the Oregon Narcotics Enforcement
8 Association, and I've attended two of their conferences, as
9 well as the California Narcotics Officers Association. Also
10 attended two conferences there. And those conferences kind of
11 touch on smaller amounts of different drug investigations. So
12 you attend maybe four different classes over the period of two
13 days. And I've had -- so a total of 16 classes, probably,
14 through them.

15 I've also done interview, interrogation training;
16 training about finding hidden compartments and concealed
17 contraband in vehicles; drug trafficking organizations or DTO
18 investigations. Had specific training on wiretap
19 investigations, money laundering, overdose investigations,
20 including investigating the overdose deaths under **Len Bias**
21 laws.

22 Q. Were you involved in a **Len Bias** investigation in late March
23 2014?

24 A. Yes, I was.

25 Q. And did you have a partner in that investigation?

1 A. I did.

2 Q. Who?

3 A. I worked with Detective Sommer Andersen.

4 Q. Right here to my left?

5 A. That's correct.

6 Q. So Detective Andersen has already testified. She
7 summarized the events from the beginning, up to March 31st and
8 Shane Baker's buy from his source. Are you with me?

9 A. Yes.

10 Q. And so what I want you to do is to focus on the moment of
11 Shane Baker and his buy from his source on the 31st through the
12 end of your investigation.

13 A. Okay.

14 Q. Okay?

15 And for the jury, the March 31st event is in Count 9
16 of the Indictment.

17 THE COURT: And please slow your pace down. I know
18 you're used to talking fast.

19 We need to all understand it. And we're also
20 translating. So it's important that you keep your pace a
21 little slower.

22 THE WITNESS: Yes, ma'am.

23 BY MS. BOLSTAD:

24 Q. Do you know what a controlled buy is?

25 A. Yes.

McNair - D

1 Q. Tell the jury what it is.

2 A. Sure. A controlled buy is where we use a confidential
3 informant, which is somebody who is working with us, law
4 enforcement, but they're not generally law enforcement
5 themselves.

6 We use that person to -- who has access to a drug
7 dealer, because I don't have a drug dealer that I can go
8 purchase drugs from, and we actually have them purchase drugs
9 on our behalf for our investigation, using money that we
10 provide; all while we're conducting surveillance, recording the
11 phone calls, and, where it gets its name -- controlling the
12 circumstances of the buy and keeping surveillance the entire
13 time.

14 So, for example, we would meet with an informant,
15 check and search the informant. If the informant has a
16 vehicle, we would search the informant's vehicle. We would
17 make sure they don't have any of their own money, you know, to
18 maybe purchase anything on their own. Make sure they don't
19 have the drugs already with them, so that we're ensuring that
20 the dugs actually come from the target of the investigation.

21 Then we would provide them with our own money that we
22 took out, have people sign a receipt for the money, follow them
23 during surveillance while they go and meet with the drug
24 source. Continue to follow both the informant and the drug
25 source after the drug transaction and meet with the informant

McNair - D

1 again.

2 Then we would obtain the drugs that were purchased
3 from the informant and do what we call a debrief. So we would
4 talk to the informant, ask them what happened. The details
5 that maybe we couldn't see on surveillance; what happened
6 inside of -- inside of the vehicle, maybe, where the deal
7 location occurred. Or if it happened in the house, details
8 about what happened in the house and how they purchased the
9 drugs. And then we would take the drugs into evidence and
10 proceed from there.

11 Q. So it sounds like after the buy that you're talking about,
12 people follow the source of supply.

13 A. Correct.

14 Q. Why not arrest the source of supply who's just sold drugs?

15 A. Sure. Ultimately our goal, when we're doing these
16 investigations is to identify as much of the drug distribution
17 network as possible. We want to identify locations where drugs
18 are being hidden and stashed. We want to identify the
19 residences of the people involved.

20 We also want to, you know, identify -- there may be
21 other co-conspirators involved that aren't actually present
22 during the drug transaction, things like that.

23 Q. On March 31st, did you monitor a phone call made by
24 Mr. Baker to his source?

25 A. Yes, I did.

McNair - D

1 Q. What number did Mr. Baker call?

2 A. So he called 442-400-4202.

3 Q. And did you observe who he had that phone number saved as
4 in his contacts?

5 A. Yes.

6 Q. What was the contact for the 442 number?

7 A. It was saved in Shane Baker's phone as Mexican Bobby.

8 Q. Do you know the provider for that phone?

9 A. It was Verizon Wireless.

10 Q. Okay. So Verizon services the 442 number?

11 A. Correct.

12 Q. And on the 31st, where did the controlled buy take place?

13 A. It took place at the 7-Eleven parking lot, which is at 6335
14 Southeast Harmony Road, which is the Milwaukie, Portland area.

15 Q. And is that in Oregon?

16 A. It is in the District of Oregon.

17 Q. Okay. What time did Mr. Baker initiate the calls?

18 Approximately, if you have it.

19 A. The first calls would have been probably just prior to

20 10:00 p.m.

21 Q. And then what time did the buy occur with Mr. Baker
22 actually -- well, let me back up.

23 Did Mr. Baker actually go to the buy?

24 A. Yes, he did.

25 Q. And what vehicle was he in?

1 A. He was in his own vehicle.

2 Q. Okay. Are you aware of what time he was at the 7-Eleven?
3 Yes, he arrived at 10:39 in the evening.

4 Q. Okay. Prior to you sending Mr. Baker to this buy, had he
5 told investigators how it typically goes for him?

6 A. Yes.

7 Q. And did he, in that description, provide vehicle
8 descriptions of who arrives to deliver the drugs?

9 A. Yes.

10 Q. And so were you and your team on the lookout for specific
11 vehicles?

12 A. We were.

13 Q. What were you looking for?

14 A. There was a Honda sedan that he had described and a red
15 S.U.V.

16 Q. Okay. Did any vehicles arrive to the 7-Eleven matching
17 either description?

18 A. Yes. A red S.U.V. arrived at approximately 10:41.

19 Q. And was Mr. Baker successful in purchasing drugs?

20 A. Yes.

21 Q. Did he -- how much drugs?

22 A. Approximately 8 ounces or a half pound.

23 Q. And afterwards, did he deliver those to you?

24 A. Yes, he did.

25 Q. What was the package? What did it look like?

McNair - D

1 A. It was tightly wrapped with Saran Wrap. And when we later
2 unraveled that, it was a brown powdery substance inside of a
3 heat-sealed bag.

4 Q. Did you send that quantity to the Oregon State Police Crime
5 Lab?

6 A. Yes, we did.

7 Q. I would like to show you Government's 56.

8 MS. BOLSTAD: And this has been marked and admitted.

9 THE COURT: Thank you.

10 BY MS. BOLSTAD:

11 Q. Do you recognize this?

12 A. I do.

13 Q. What is it?

14 A. It is an Oregon State Crime Lab report.

15 Q. And what did the lab confirm here?

16 A. The lab confirmed that the item we submitted from that
17 controlled buy tested positive for heroin, and that it was
18 200.22 net grams.

19 Q. Okay. Was this the heroin from March 31st?

20 A. Yes.

21 Q. Is 200 more than 100?

22 A. Yes.

23 Q. Thank you. I would -- I like the obvious questions, too.

24 Okay. Earlier, you told the jury about the
25 importance of following vehicles afterwards. So did that

McNair - D

1 happen after the March 31st buy?

2 A. Yes, it did.

3 Q. Where did that red S.U.V. go?

4 A. It went to a residence close by. To the 7-Eleven.

5 Q. Did your team obtain a license plate on the vehicle?

6 A. Not that evening, we did not.

7 Q. Later?

8 A. Later, the following day, we -- we did surveillance. The
9 evening of the buy, the car parked inside of the garage, so we
10 couldn't get the license plate.

11 The following day we did surveillance and saw the
12 vehicle leave the garage and we were able to get the license
13 plate.

14 Q. What was that plate, if you remember?

15 A. It's 827DRK.

16 Q. So you mentioned it went into a garage. What was the
17 address of that location?

18 A. That's 11759 Southeast 64th. I believe it's "Court." And
19 it's Milwaukie.

20 Q. What did you do with the information of that address?

21 A. I contacted Portland General Electric, who was the electric
22 provider for the residence, and obtained information about the
23 power subscriber who -- who was assigned to pay the power bill.

24 Q. What name did you obtain?

25 A. It showed that Fabian Sandoval-Ramos was the person on the

McNair - D

1 power.

2 Q. And did your team later obtain paper documentation of that
3 fact?

4 A. Yes, we did.

5 Q. I'm going to show you Government's 57.

6 What is this?

7 A. That's a subpoena return from Portland General Electric.

8 Q. And this has been marked and admitted.

9 What does it show you here? What -- what should we
10 look at?

11 A. Down at the bottom portion, it shows the response to the
12 subpoena, which was a request for the subscriber information
13 for the address on 64th. And it shows in there that it was --
14 the customer of record was Fabian Sandoval-Ramos. It provides
15 his identifying information as well.

16 Q. And does it give a start date?

17 A. It does. It shows that the account was initiated July 13th
18 of 2011.

19 Q. Okay. Does it show a move-out date?

20 A. Yes.

21 Q. What's that date?

22 A. It's April 14th, 2014.

23 Q. Is that after your investigation concluded?

24 A. Yeah. Just under two weeks after.

25 Q. So once you had the name Fabian Sandoval-Ramos, what do you

McNair - D

1 do with a name?

2 A. We checked it in Washington and in Oregon D.M.V. records.

3 Q. And what information did you learn?

4 A. I learned that Fabian Sandoval-Ramos had a different
5 address listed on his Oregon driver's license record.

6 Q. What was that address?

7 A. That's 7915 Southeast King Road, Apartment No. 2. And it's
8 also in Milwaukie, Oregon.

9 Q. Did the D.M.V. records of either state show any vehicles
10 registered in his name?

11 A. Yes. I ran a separate query under Oregon for vehicles
12 registered under the name Fabian Sandoval-Ramos. And I found
13 that the Honda Passport with the plate 827DRK, the same vehicle
14 that we had seen at the location on 64th, was registered to
15 Fabian Sandoval-Ramos.

16 Q. And is that the same vehicle that delivered to Shane Baker
17 on the 31st?

18 A. Yes.

19 Q. Let's talk about that second address. I'm going to call it
20 location 2. Okay?

21 A. Okay.

22 Q. 7915 Southeast King.

23 Is this the first time you had learned of location 2
24 in your investigation?

25 A. Yeah, after we ran Fabian's name in D.M.V. records, that's

McNair - D

1 the first time we found that address.

2 Q. Okay. Just a moment.

3 (Pause, Ms. Bolstad and the defense attorneys
4 conferring.)

5 MS. BOLSTAD: And, your Honor, may I show a diagram?
6 No objection.

7 THE COURT: Yes, you may approach the witness.

8 If you're going to use the easel, you need to move it
9 out to where the jurors can see it without blocking the vision
10 of the witness or the parties.

11 Move it back a bit so the witness can see it. Angle
12 it so the jurors can see it.

13 MS. BOLSTAD: Right. That's important.

14 THE COURT: It's not as easy as it sounds.

15 MS. BOLSTAD: Defense counsel, can you see?

16 MR. SEPP: (Nods head.)

17 THE COURT: Go ahead.

18 MS. BOLSTAD: Oh, I better turn it around.

19 THE COURT: Does this have a number, for reference?

20 MS. BOLSTAD: This is Government's Demonstrative 1.

21 THE COURT: All right. Go ahead.

22 BY MS. BOLSTAD:

23 Q. Do you recognize this map?

24 A. I do.

25 Q. And what do we see here?

McNair - D

1 A. This is an overhead view of the area of Milwaukie that
2 would encompass both the deal location at the 7-Eleven, which
3 we're calling location No. 1, the address on 64th and location
4 No. 2, the address on King Road.

5 Q. And I see pictures associated with each address. First,
6 are the pictures of the residences shown?

7 A. Yes, they are.

8 Q. Okay. And I also see pictures of people.

9 Are those the people associated with those locations?

10 A. Yes. Those are some of the people associated at those
11 places.

12 Q. Okay. So were you able to -- were you able to determine a
13 distance between location 1 and location 2?

14 A. Yeah, it's less than two miles driving.

15 Q. And what is the proximity of those two locations, 1 and 2,
16 to the 7-Eleven on Harmony?

17 A. Location No. 1 is approximately .3 or a third of a mile
18 from the 7-Eleven. And location No. 2 is right around two
19 miles.

20 Q. The photograph of Mr. Fabian Sandoval-Ramos, I'm going to
21 show you, on the screen in front of you, Government Exhibit --
22 I believe it's 50 -- 59.

23 Did you obtain a photograph of him?

24 A. Yes.

25 Q. Is this it?

McNair - D

1 A. That is.

2 Q. Okay. Washington D.M.V?

3 A. That is a Washington D.M.V. photograph, yes.

4 Q. So once you had the name Fabian Sandoval-Ramos and the
5 photograph that's associated with that name, did you show it to
6 anybody?

7 A. I did. I sent that photograph, and the photograph only, by
8 e-mail to a group of people who work in the Washington County
9 jail.

10 They're called the WIN, which is the narcotics team.
11 The WIN jail liaisons. So they're people who are deputies in
12 the jail, but they're our liaisons. So they help us if we have
13 questions of somebody that's in the jail.

14 So I e-mailed this photograph to the WIN liaisons and
15 asked that it be shown to Shane Baker.

16 Q. What instructions did you give the liaison in making that
17 showing?

18 A. I asked them to show this photograph, and ask if Mr. Baker
19 recognized the person in the photograph.

20 Q. Did your liaison in the jail know anything about your
21 investigation from your -- had you provided him with
22 information?

23 A. Other than the photograph and asking him to show, I didn't
24 provide any information about the case.

25 Q. And so my question is this: Did the deputies at the jail

1 know who this was?

2 A. No.

3 MR. ANDERSEN: I object. He can't testify to what --

4 MS. BOLSTAD: I'll rephrase.

5 THE COURT: Rephrase the question.

6 BY MS. BOLSTAD:

7 Q. Did you send a photograph with any identifying marks on it
8 to the jail?

9 A. No. The only thing that was there was the actual
10 photograph as an attachment, and then my e-mail request to show
11 the photograph. I didn't have any information about who this
12 was or who we suspected it to be, or anything.

13 Q. Okay. And what did you learn back from your jail liaison?

14 A. I got an e-mail back from Deputy Howell, who is one of the
15 jail liaisons, who said that Mr. Baker identified this person
16 as the person that Mr. Baker knew to be Mexican Bobby.

17 Q. What day did that information from Mr. Baker -- what day
18 did he look at the photo?

19 A. April 1st, I believe.

20 Q. Okay. Was that the day following the March 31st buy?

21 A. Yes, it was.

22 Q. Let's talk about April 2nd.

23 MS. BOLSTAD: And, ladies and gentlemen, we're now
24 moving into Count 10 but also Counts 1 and 2.

25 BY MS. BOLSTAD:

McNair - D

1 Q. Prior to April 2nd, did your team come up -- did your team
2 obtain judicial authorization to search any of these locations?

3 A. On the 2nd, we obtained a search warrant for location
4 No. 1.

5 Q. Okay. Did you have a -- I'm sorry. Did you have a search
6 warrant yet for location No. 2?

7 A. No.

8 Q. When, if ever, did you obtain a search warrant for location
9 2?

10 A. It was a short time after we executed the search warrant at
11 location No. 1.

12 Q. So working with your partner Detective Andersen, can you
13 tell the jury what your operational plan was for April 2nd?

14 A. Sure. So our plan was to set surveillance units around all
15 three of these locations: The 7-Eleven, which was the deal
16 location; the location No. 1, which was where we saw the car go
17 back to; and location No. 2, which we believed to be a
18 residence likely involved in this case.

19 We planned to use Mr. Baker to make another phone
20 call for another delivery, and then our intent was to watch
21 what activity that would spur around these locations. That
22 might lead us to have more information about which location was
23 involved and how they were involved.

24 And our plan was then, once we made the order, to
25 follow whoever left these locations and went to the deal

McNair - D

1 location, and then to eventually stop them and arrest them.

2 Q. Is it fair to say that at this stage you didn't yet know
3 where the drugs were coming from?

4 A. That is correct.

5 Q. Okay. You knew they had come from a vehicle. Is that
6 fair?

7 A. Yeah, we knew that they had been delivered to the deal
8 location in that red S.U.V., but we did not know where the
9 drugs had come to prior to that deal.

10 Q. Were you -- were you with Mr. Baker when he placed the
11 phone calls on April 2nd?

12 A. I was.

13 Q. Where were you?

14 A. At the Washington County Sheriff's Office, up in the
15 detective's office.

16 Q. And did you record the phone calls of Mr. Baker?

17 A. Yes, we did.

18 Q. Do you know approximately what time he initiated contact
19 with his source?

20 A. It was about 3:45 in the afternoon.

21 Q. And was there one call or multiple calls?

22 A. There were two initial phone calls to set up the
23 transaction. And then, later on down the road, there was a
24 couple more calls.

25 Q. Is one of the initial calls -- did it go unanswered?

McNair - D

1 A. I don't remember. I -- I think they both connected.

2 Q. Okay. I'm going to play you what's been marked and
3 admitted as Government Exhibit 60. And I'll note for the
4 record that there's a beep between two separate calls. Okay?

5 So I'll have you listen to this, and then I'll ask
6 you what it is you just heard.

7 A. Sure.

8 THE COURT: For the record, the court reporter need
9 not transcribe the exhibit. To the extent the interpreter is
10 able, given the quality of the call, interpretation should be
11 provided.

12 Go ahead.

13 (Pause, audio playing.)

14 BY MS. BOLSTAD:

15 Q. Do you recognize those calls?

16 A. I do.

17 Q. Okay. What did we hear?

18 A. You heard me in the background, talking to Mr. Baker before
19 he made the phone call and making sure he was ready to make the
20 calls. And then a series of phone calls setting up the drug
21 transaction at the same location as the prior deal.

22 Q. Okay. And did they sound -- there was a beep in the middle
23 there. Do you know how much time elapsed between the first
24 portion and the second?

25 A. I believe it was just a few minutes.

McNair - D

1 Q. Okay. And did that seem to be in the right order?

2 A. Yeah. I mean, it seemed to go with what I would expect.

3 Q. Okay. At some point we hear a voice say, We had a good
4 call. Was that your voice?

5 A. That was my voice over the radio, advising everybody else
6 who was on surveillance.

7 Q. And what were you telling them to do?

8 A. To prepare for movement from the locations they were
9 watching.

10 Q. Were there any discussions of price or type of drug in this
11 call?

12 A. No.

13 Q. And the "I'll be at the store," what did that mean?

14 A. Well, "I'll be at the store at the same location," that, to
15 me, meant that it was going to be the same location as before,
16 which is the 7-Eleven store.

17 Q. Okay. Detective McNair, we will hear from witnesses, after
18 your testimony, about the traffic stop on the vehicle, okay?
19 So I don't want to get too in-depth on this.

20 But before we move on, could you summarize to the
21 jury what happened with the 7-Eleven store on April 2nd, to put
22 in context the rest of your testimony?

23 A. Sure.

24 Q. So a green Honda that had departed from location No. 1,
25 drove over to the 7-Eleven. It slowly rolled through the

McNair - D

1 7-Eleven parking lot and then around the block. Then the
2 vehicle drove away. And a few minutes later, we had a vehicle
3 stop the car. A marked patrol car.

4 Q. And was anything found inside that green Honda Civic?

5 A. Yes.

6 Q. What?

7 A. There was additional heroin. Approximately 392 grams in
8 two separate amounts. One was approximately 8 ounces and
9 labeled with an 8. And one was approximately 5 ounces, and
10 labeled with a 5.

11 Q. When that green Honda Civic was slowly circling around the
12 7-Eleven, were there calls received by Mr. Baker?

13 A. Yes.

14 Q. And were you still with Mr. Baker when that delivery was
15 about to happen?

16 A. Yes.

17 Q. Were you looking at his phone?

18 A. Yes. I had his phone with me, so that I had control of the
19 phone. And before I would let him get -- answer a phone call,
20 I would make sure I looked at it.

21 Q. Okay. And so at the -- are you also hearing from
22 surveillance officers on the scene?

23 A. Yes. I had my police radio in the same room.

24 Q. Okay. So tell us about the calls received by Mr. Baker.

25 A. Mr. Baker received a phone call from the same phone number

McNair - D

1 that we called to place the order, and asked him where he was.

2 Mr. Baker explained that he was in a silver car in
3 the parking lot, as I had direct the him to say. And then,
4 eventually, in one of the phone calls, the person who we were
5 calling Mexican Bobby on the phone, asked him to go to a
6 different location and to follow the Honda to the Lowe's.

7 Q. Had that ever happened before with Mr. Baker, to your
8 knowledge? Go to a different location?

9 A. No.

10 Q. What do you think was happening?

11 A. I believed that they were suspicious because his vehicle
12 wasn't there.

13 Q. Whose vehicle wasn't there?

14 A. Because Shane Baker's vehicle wasn't at the 7-Eleven, we
15 believed that the suspects delivering it were apprehensive
16 about stopping.

17 Q. And his -- why wasn't his vehicle at the 7-Eleven?

18 A. Because he was in custody at the Washington County jail.

19 Q. Okay. And so did you also hear from surveillance agents at
20 the 7-Eleven about the traffic stop?

21 A. I did.

22 Q. Did they stop the car in a different location, or where was
23 it stopped?

24 A. Yeah, it was somewhere -- I don't know the exact location.
25 I would have to see it. Somewhere -- but it was somewhere

McNair - D

1 between the 7-Eleven and en route to the Lowe's.

2 Q. Okay. Let's move ahead to the search warrant at location
3 1.

4 Did you leave Mr. Baker in jail?

5 A. I did. Once we had stopped the green Honda car, I then
6 lodged him back at the jail, and I drove out to Milwaukie from
7 Hillsboro.

8 Q. Okay. Did you participate in the search of location 1?

9 A. I did.

10 Q. What time did that begin?

11 A. They executed the search warrant approximately 5:45, I
12 believe.

13 Q. p.m.?

14 A. p.m., yes.

15 Q. And Agent Blankenship will testify about the details of
16 that search.

17 Could you summarize what was found at location 1?

18 A. Sure.

19 We found approximately 13,000 dollars in cash. And
20 that was out of a couple of different locations in the house.

21 We found a bunch of drug packaging materials that
22 clearly were used packaging materials, similar to the stuff we
23 had seen the drugs packaged in that we obtained. Lots of
24 pastic wrap, heat-seal packages, things like that. And some of
25 that was dirty, and I could actually still smell the -- smell

McNair - D

1 the heroin on it.

2 So we also found things like drug packaging that had
3 not yet been used. Heat sealers, heat-seal packaging, large
4 Costco-size boxes of plastic wrap. So we found some drug
5 records, some cutting agents, or agents used to dilute the
6 drugs.

7 Q. Okay.

8 A. I believe that's it.

9 Q. Did you see any signs of heroin addiction or use at
10 location 1?

11 A. No. I didn't find any evidence that would lead me to
12 believe they were being used there.

13 Q. No needles?

14 A. No needles, nothing like that.

15 Q. Did you leave location 1, at some point?

16 A. I did.

17 Q. Where did you go?

18 A. I went over to the area of location 2.

19 Q. Before you left location 1, did you observe any cutting
20 material or things used to dilute drugs?

21 A. I did, in the kitchen.

22 Q. I'm going to show you Government's 77.

23 What is this?

24 A. That's a photograph of the kitchen of location No. 1. And
25 in the photograph, you can see the large -- it's actually

McNair - D

1 Costco-brand plastic wrap.

2 Behind that, you can see bags of lactose, which is a
3 white powder milk sugar substance which is used as a cutting
4 agent often; as well as a cut-open bag of sugar, which could
5 also be used as a cutting agent.

6 Q. And so during that search at location 1, did anyone see
7 Fabian Sandoval-Ramos at location 1?

8 A. No.

9 Q. Were you still looking for him, though?

10 A. Yes.

11 Q. And why was that?

12 A. Well, again, we believed that he was, at that time, Mexican
13 Bobby; and on the power and subscriber; and somehow involved in
14 this investigation. And, by that time, we had actually --
15 surveillance had seen him at location No. 2.

16 Q. Okay. And why did you believe Fabian Sandoval-Ramos was
17 Mexican Bobby?

18 A. Based on Shane Baker's ID of his D.M.V. photo as the person
19 he knew as Mexican Bobby.

20 Q. And have you changed your mind about whether he is in fact
21 Mexican Bobby?

22 A. I would say that Mexican Bobby is more a figurehead name.
23 I don't know that there's an actual Mexican Bobby as -- as much
24 as there are different people that answer phones.

25 Q. Tell us how your time at location 2 began.

McNair - D

1 A. It began with the execution of the search warrant at
2 location No. 2.

3 Q. I'm going to show you Government's 101.

4 What is this?

5 A. That's a photograph of the front of location No. 2.

6 Q. And do you remember what time you arrived at location 2, on
7 April 2nd?

8 A. I don't remember the exact time I got there. I -- I was
9 out there in the area of location 2, helping on surveillance
10 prior to the actual execution of the search warrant. And
11 that -- the execution was at about 9:30 p.m.

12 Q. Okay.

13 THE COURT: Ms. Bolstad, before we get too deep into
14 location No. 2, we do need a morning recess. If this is going
15 to be brief, you could do it; otherwise, we should adjourn.

16 MS. BOLSTAD: I think a break would be appropriate.

17 THE COURT: All right. Ms. Boyer, would you move the
18 chart, so that it's out of the jurors' way.

19 Ladies and gentlemen, we will take our 15-minute
20 morning recess. Remember, do not talk about the case or let
21 anything involving it cross your path. Don't do any research
22 or any other outside inquiry about the case. Time for a break.

23 Please stand, ladies and gentlemen, for the jury.

24 Watch your step, jurors. We'll be back in session in
25 15 minutes.

McNair - D

1 (Jurors exit, 10:30 a.m.)

2 THE COURT: You may step down, Detective McNair, and
3 watch your step around this chair.

4 THE WITNESS: Thank you.

5 THE COURT: All right. Anything for the record
6 before we recess?

7 MS. BOLSTAD: No, your Honor.

8 MR. SEPP: No, your Honor.

9 THE COURT: 15 minutes, please.

10 (Recess taken, 10:42 a.m.)

11 THE COURT: Is there anything for the record before
12 we ask the jury in?

13 MS. BOLSTAD: No, your Honor.

14 MR. SEPP: Nothing, your Honor.

15 THE COURT: All right. Please be seated, or you can
16 stay standing.

17 At your convenience, please bring the jury in.

18 (Jurors enter, 10:51 a.m.)

19 THE COURT: Thank you, everyone. Please be seated.

20 Ms. Bolstad, you may continue.

21 MS. BOLSTAD: Thank you, your Honor.

22 BY MS. BOLSTAD:

23 Q. Detective McNair, we were just talking about location 2.

24 I think we left off with your arrival.

25 Do you remember approximately what time?

McNair - D

1 A. Again, we executed the search warrant around 9:30 p.m., and
2 I probably arrived at least an hour before, in the area.

3 Q. Okay. And were other members of your team already at
4 location 2?

5 A. Yes.

6 Q. Were they there conducting surveillance?

7 A. Yes, they were.

8 Q. We're going to hear from one of those deputies later.

9 Can you summarize what you learned, when you arrived
10 at L2, about Fabian Sandoval-Ramos?

11 A. Sure. I had learned that Detective Miller, who had been
12 there on surveillance, had seen Fabian going in and out
13 multiple times from location No. 2. I also learned, during the
14 course of surveillance, that Detective Miller saw a female
15 leave location No. 2 with a trash bag and dispose of it in the
16 dumpster, the community dumpster at the apartment complex.

17 Q. When the search warrant happened, were photographs taken?

18 A. Yes.

19 Q. I'm going to walk through some of those. I would like to
20 show you Government Exhibit 103.

21 What is this?

22 A. That's a photograph outside of location No. 2. And that's
23 a second-story window overlooking the front door area of the
24 residence. And you can see a black surveillance camera.

25 Q. And is it over the door of apartment 2?

McNair - D

1 A. Yes.

2 Q. Let's look at Exhibit 104.

3 What is this?

4 A. That's another surveillance camera.

5 Q. Same location?

6 A. Still on the front of the residence, different -- different
7 window.

8 Q. Whose cameras are those?

9 A. They go -- they feed into location No. 2. So the residence
10 of location No. 2, I would assume.

11 Q. So are you sure they're not -- they don't belong to the
12 apartment complex?

13 A. None of the other locations had them. And, again, they
14 feed directly into this residence and not -- like a central
15 manager's office, or something.

16 Q. Did you observe any surveillance equipment inside apartment
17 2?

18 A. I remember surveillance equipment, but I don't remember
19 exactly where it was.

20 Q. Okay. I'm going to show you Government Exhibit 105.

21 What is this?

22 A. This is inside the living area of location No. 2. You
23 could see the dining table in the kitchen and that slider goes
24 out to a back -- small back patio area.

25 Q. Let's look at 106.

McNair - D

1 A. This is also a photograph in the living area. You can see
2 the stairs coming down from the second story of location No. 2
3 and the front door would have been basically where the stair
4 landing is.

5 Q. 107.

6 A. 107 is a photograph of a checkbook found inside of location
7 No. 2 with the names Fabian Sandoval-Ramos and Imelda
8 Sanchez-Olivera.

9 Q. And is that the address of location 2?

10 A. Yes, and it lists the address of location 2 on the checks.

11 Q. Could you summarize what was observed evidentiary-wise
12 inside of location 2?

13 A. Sure. Again, we found the checkbook. There was insurance
14 information on a dresser with Fabian's name on it. There were
15 some airline tickets, bank statement information, and what
16 looked to be drug records found in the master bedroom.

17 Q. Did you find any pay stubs or work -- work documentation?

18 A. No.

19 Q. I'm going to show you Government Exhibit 122.

20 We have heard testimony earlier in this case. Do you
21 know who this individual is?

22 A. I believe that's D.M.V. photograph of Carlos
23 Sandoval-Ramos.

24 Q. Okay. Is this a picture that later, in the investigation,
25 was shown to Mr. Baker?

McNair - D

1 A. Yes.

2 Q. Okay. Did you see Carlos Sandoval-Ramos, the person
3 pictured in 122, did you see him at either location 1 or 2?

4 A. No.

5 Q. Did you see him at any time during your investigation?

6 A. I have never seen him, other than the photograph.

7 Q. Did you find any drugs at location 2?

8 A. No.

9 Q. Any huge amounts of cash?

10 A. No.

11 Q. Any digital scales?

12 A. No.

13 Q. Any needles or evidence of drug use?

14 A. No.

15 Q. A family home?

16 A. It was.

17 Q. Kids live there?

18 A. Yes.

19 Q. How many, do you know?

20 A. I don't remember. Two or more.

21 Q. Any babies?

22 A. No.

23 Q. I would like to show you Government Exhibit 110.

24 What is this?

25 A. This is a photograph of the community dumpster, which would

McNair - D

1 be in front of location No. 2. And in the background, you can
2 actually see the building and the front door of location No. 2.

3 Q. When was this photograph taken?

4 A. This was taken a couple months ago.

5 Q. Okay. So about what time of the day?

6 A. This was mid-day. I drove out there, took it.

7 Q. Back on April 2nd, did you look in that dumpster?

8 A. I did.

9 Q. Did you guys take pictures of the dumpster on April 2nd?

10 A. I took pictures of things we found in the dumpster, but I
11 don't recall taking pictures of the actual dumpster.

12 Q. Okay. Tell the jury about your search of the dumpster.
13 Who had the pleasure of getting in there?

14 A. I did.

15 Q. Wonderful. Tell us about that.

16 A. Sure. Went out to the dumpster area. Again, it was dark.
17 So had flashlights. I actually physically climbed into the
18 dumpster and started looking through the -- the bags.

19 Q. What did you find?

20 A. I found one bag in particular that had paperwork torn up,
21 which was a T-mobile phone bill with -- you could read parts of
22 the name; that appeared to be Fabian Sandoval, partially cut
23 off on each side. But it was the right letters.

24 We also found numerous bags of the same lactose that
25 you had seen in the other photos at location No. 1. They were

McNair - D

1 probably -- I don't know, maybe 10 or so full, unopened bags
2 inside of the same trash bag as the phone bill.

3 Q. What do you mean, unopened?

4 A. They were sealed, like they hadn't been used yet. Like
5 they were brand new.

6 Q. Did you find anything else in the dumpster?

7 A. We did. We found at the bottom of the dumpster -- right
8 near where that bag was found, we found an LG phone that had
9 been broken. And the battery cover and the battery had been
10 removed and were found in another spot in the dumpster. And,
11 again, it was completely broken.

12 Looked bent, snapped in half, almost.

13 Q. Start with the lactose.

14 I'm going to show you Government's Exhibit 111.

15 A. And, yeah, this is the photograph we took of the trash bag,
16 that I had the pleasure of going through. And in it, you can
17 see the torn-up pieces of paper that had the phone bill, as
18 well as the multiple bags of unopened lactose powder.

19 Q. Were those lactose bags outside the bag or inside of the
20 bag?

21 A. They were found inside of the bag, and it was closed.

22 Q. Let's look at 112.

23 A. That's a closer photograph of the same lactose bags found
24 in the trash bag.

25 Q. Do you know what lactose is used for in general?

McNair - D

1 A. Yeah. As far as legitimate uses, you can -- it's used
2 sometimes in baby formula -- as a small portion of the baby
3 formula. It can be used pharmaceutically for a filler for
4 pills, things like that. Some supplements that it can be used
5 in. It's just milk sugar.

6 Q. And with the -- did -- legitimate uses that you're aware
7 of -- like, for example, the baby formula -- how much lactose
8 is used at a time?

9 A. Of the recipes I've looked at, it's maybe four tablespoons,
10 to make 36 ounces of baby formula. And each tablespoon is like
11 a gram -- or a couple grams.

12 Q. How many grams are in each of these bags?

13 A. 400 and change. It's a pound.

14 Q. Prior to seeing this lactose on April 2nd, had you ever
15 seen this brand at any of your prior search warrants in drug
16 houses?

17 A. No, never.

18 Q. I'm going to show you Government Exhibit 113.

19 Can you point out -- I think if you touch the
20 screen -- I'm not sure. If you touch the screen, you can maybe
21 show the jury the name that you were referring to.

22 THE COURT: Bonnie, would you show the witness how to
23 point on the screen.

24 That's all right. We have a font you have to use,
25 so -- there we go.

McNair - D

1 BY MS. BOLSTAD:

2 Q. We've zoomed in?

3 A. You have now zoomed into the area that has the partial name
4 that you can see. It has a T-mobile bill and part of an F for
5 Fabian. And most of Sandoval. What I suspect is.

6 Q. And then let's look at Government Exhibit 114.

7 Do you recognize this?

8 A. I do.

9 Q. What is it?

10 A. That's the broken cell phone I found in the dumpster.

11 Q. I'm going to bring you Government's 115. Take a look at
12 what's inside.

13 A. And this is the cell phone, as well as the battery cover
14 and battery that we found.

15 Q. Okay. And what do you notice about this phone?

16 A. The phone's been broken. Both sides of the phone have been
17 cracked as if it had been bent in half.

18 Q. Okay. When you found the phone in the dumpster, was it
19 together, in all of its relevant parts?

20 A. No. Again, the phone piece itself was separate. And then
21 we had to search around for the cover and the battery.

22 Q. After your search of the dumpster -- well, let me ask you
23 this. Did you find anything else in the dumpster?

24 A. I don't believe there was anything else of interest.

25 Q. Okay. After your search of the dumpster, did you

McNair - D

1 participate in interviews with witnesses?

2 A. I did.

3 Q. Who did you interview first?

4 A. Imelda Sanchez-Olivera.

5 Q. Second?

6 A. Fabian Sandoval-Ramos.

7 Q. Did you interview any other people on scene?

8 A. No.

9 Q. Okay. We're not going to go into what Ms. Sanchez-Olivera
10 told you.

11 A. Okay.

12 Q. Was it a long interview?

13 A. They were pretty brief interviews, both of them.

14 Q. And after you had spoken with Ms. Sanchez-Olivera, did you
15 then go talk to Mr. Fabian Sandoval-Ramos?

16 A. Yes.

17 Q. Separate location?

18 A. Yeah. Just a -- a short distance away.

19 Q. Prior to your discussion with Mr. Sandoval-Ramos, was he
20 advised of his **Miranda** rights?

21 A. Yes, he was.

22 Q. And what language did this all happen in?

23 A. It was all in Spanish.

24 Q. Do you speak Spanish?

25 A. I do not.

McNair - D

1 Q. Who did?

2 A. Special Agent Dan Riley, with DEA. He was on the scene,
3 and he translated the interview.

4 Q. And where was this interview taking place?

5 A. There's a -- a -- an adjacent parking lot to the apartment
6 complex, where there was a small business, like a small trip
7 mall. And there's a front covered area that was lit, so we
8 walked over there.

9 Q. And who all was present for this interview?

10 A. I was present, detective Andersen was present, and Special
11 Agent Riley.

12 Q. Anyone else from law enforcement?

13 A. Not that I remember.

14 Q. Did you hear Special Agent Riley advise him of rights?

15 A. Yes.

16 Q. Did Mr. Sandoval-Ramos make an indication that he
17 understood those rights?

18 A. Yes.

19 Q. Did he speak with you?

20 A. He did.

21 Q. At any point did you let Mr. Fabian Sandoval-Ramos know the
22 circumstances of this investigation?

23 A. Yes.

24 Q. Did you inform him of the seriousness of -- the idea that
25 someone had died?

1 A. Yes, we did.

2 Q. And did he choose to speak with you?

3 A. He did.

4 Q. Describe for us the atmosphere of that interview.

5 A. It was casual conversation tone. Again, it was through
6 translations, so we would speak to Fabian and have to be
7 translated.

8 Q. How long did it take?

9 A. I couldn't tell you exactly, but probably less than 30
10 minutes.

11 Q. At any point in your discussion with Mr. Sandoval-Ramos,
12 did he appear confused by the questions being asked?

13 A. No.

14 Q. Did it appear that he could communicate with Special Agent
15 Riley?

16 A. Yes.

17 Q. And were any part of his communications with you in
18 English?

19 A. No.

20 Q. Did it appear that he understood what you were asking in
21 English?

22 MR. ANDERSEN: Objection, I think that calls for
23 speculation.

24 THE COURT: It does not. But phrase the question
25 more specifically with respect to what this witness observed,

McNair - D

1 whether he observed any indication that there was not
2 communication.

3 The conclusion, of course, is for the jury to draw,
4 based on whatever they hear about this.

5 BY MS. BOLSTAD:

6 Q. So tell the jury, were you asking questions in English?

7 A. When we first talked to him, I tried to ask him if he spoke
8 English, but clearly he didn't speak English.

9 Q. And so in the interview, were you asking questions in
10 English that were then translated?

11 A. Yes.

12 Q. Did Mr. Sandoval-Ramos wait to answer the questions until
13 they had been translated?

14 A. Yes.

15 Q. What did Mr. Sandoval-Ramos say when you interviewed him?

16 A. Well, we asked him about his broken phone that we found.
17 And he explained that the phone broke.

18 MR. ANDERSEN: Your Honor, I'll object to this. I
19 think it's hearsay. I think we might be hearing from the
20 actual translator, who might be better able to explain what he
21 actually heard.

22 THE COURT: Well, let me take this in two parts.

23 First, a statement made by the defendant is not
24 hearsay. It is an admission of a party opponent. So the
25 hearsay statement is over -- objection is overruled. The fact

McNair - D

1 that this may be cumulative, however, is worth pursuing.

2 Can we not just wait until we get the information
3 from the actual translator?

4 MS. BOLSTAD: We could, your Honor, but it does
5 inform the context, and there's only three statements made. So
6 I would like to cover it now.

7 THE COURT: All right. I'll overrule the objection.
8 Go ahead.

9 BY MS. BOLSTAD:

10 Q. What did Mr. Fabian Sandoval-Ramos tell you?

11 A. He told us that his phone had broken between 5:00 and 6:00
12 p.m., and that he then put it in the dumpster.

13 Q. What about the lactose?

14 A. He denied that it was used for a cutting agent.

15 Q. And did you -- did you relay to Mr. Sandoval-Ramos that
16 investigators had seen a woman throwing something out?

17 A. Yes.

18 Q. And what did he have to say about that?

19 A. He couldn't explain why that happened.

20 Q. Did he deny that that happened?

21 A. No.

22 Q. And you mentioned this idea of 5:00 to 6:00 p.m., was he --
23 was he giving you that specific time frame?

24 A. Yes.

25 Q. Do you recall approximately what time Mr. Raul Arcila and

McNair - X

1 Mr. Placido Ramirez Coronel were stopped on April 2nd?

2 A. It was approximately 5:30. Maybe somewhere between 5:20
3 and 5:30 p.m.

4 Q. I would like to show you Government's 108.

5 Earlier you mentioned that you -- your team found
6 drug records at L2.

7 Is this the drug records that were found?

8 A. Yes.

9 Q. And we'll hear from investigator Miller on that topic.

10 Finally, did you find any other cell phones besides
11 the broken phone from a dumpster for Mr. Sandoval-Ramos?

12 A. We did. Including an iPhone that was found in the master
13 bedroom, I believe.

14 Q. I'm going to show you 109, if I can find it.

15 (Witness handed exhibit.)

16 BY MS. BOLSTAD:

17 Q. Does this appear to be an iPhone?

18 A. This is in fact an iPhone.

19 Q. Okay. Does that look like what was seized at L2?

20 A. Yes.

21 Q. Any evidence of heroin use in that home?

22 A. No.

23 MS. BOLSTAD: Nothing further on direct.

24 THE COURT: Cross.

25 MR. ANDERSEN: Thank you, your Honor.

McNair - X

CROSS-EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. ANDERSEN:

Q. Now, let's -- I just want to have a -- one question about -- you mentioned you sent an e-mail to your colleague at the jail. Did you save that e-mail?

A. I did not.

Q. You didn't print that out?

A. I don't remember printing it out. No.

Q. You've got no record of that e-mail?

A. No.

Q. Now, you also mentioned, when you went to L2 -- what we're calling L2, you saw a surveillance camera; what you thought was a surveillance camera outside.

Now, have you seen -- or were you at L1? And did you see the -- the television equipment, and all of that sort of thing that was set up there?

A. Yes, L1 also had surveillance.

Q. Well, here's my question. There was the same -- there was no -- there was no set up like that at L2, was there?

A. I don't remember --

Q. You --

A. I don't remember specifically where the equipment went to.

Q. Do you remember what it was? You said you -- you -- what's the surveillance equipment you're talking about?

A. I don't remember specifically what it is. I was only

McNair - X

1 inside of location No. 1 -- or location No. 2 briefly. I
2 remember walking through and at some point seeing surveillance
3 equipment.

4 Q. But you don't remember what that was or where that was, or
5 anything about that?

6 A. No. I could look at the photos and see if I see anything
7 in there, but I don't recall.

8 Q. In your recollection, there was not the type of set up that
9 you saw at L1?

10 A. Right. L1 had -- literally, in the living room, it was on
11 the TV.

12 Q. And there was nothing like that?

13 A. Not that I remember, no.

14 Q. And there was no -- oh, what do you call it? Barricades on
15 the door, or anything of that nature?

16 A. At location No. 2?

17 Q. Correct.

18 A. No.

19 Q. How many officers were involved in serving that search
20 warrant on L2?

21 A. Don't know exactly, but I would guess probably ten or so by
22 the time it was done.

23 Q. Were they armed?

24 A. Yeah. I would assume everybody was armed.

25 Q. And were you there for the entry?

McNair - X

1 A. I was.

2 Q. Was it a forcible entry or -- how would you -- how did you
3 get in the --

4 A. I believe we knocked, and they came to the door. There
5 were people in the living area.

6 Q. And you mentioned this casual conversation. Was that --
7 that was after you entered? And, obviously, you had secured
8 the house, to whatever extent --

9 A. Right. So the house would be secured. Basically would
10 corral everybody in one spot. We would search, make sure there
11 was nobody else hiding, everything like that. And then
12 normally we kind of do a walk through to kind of get an idea if
13 there is any obvious evidence we want to discuss in the
14 interview before we then go talk.

15 Q. Do you remember handcuffing any of the family members you
16 found there?

17 A. I don't remember who was handcuffed but -- so -- it would
18 be -- I would expect that some people -- adults, normally, we
19 handcuff, initially. But I don't -- in this particular
20 instance, I don't remember who particularly was handcuffed.

21 Q. And I believe you found there was an adult -- at least one
22 or two adults there besides Mr. Sandoval?

23 A. Yeah. There was Mr. Sandoval-Ramos -- I can't remember the
24 female's name. But two adult females as well.

25 Q. Okay. And then there were three children there. Right?

McNair - X

1 A. I believe so, yes.

2 Q. That's all. Thank you.

3 A. Thank you.

4 THE COURT: Mr. Sepp?

5 MR. SEPP: I have nothing -- no questions of this
6 witness.

7 THE COURT: Thank you. Redirect?

8 MS. BOLSTAD: None, your Honor. Thank you.

9 THE COURT: Thank you, sir. You're free to go.

10 THE WITNESS: Thank you, your Honor.

11 THE COURT: Next witness, please.

12 MS. BOLSTAD: The Government calls Deputy Olson.

13 THE COURT: Sir, please watch your step. Come all
14 the way up to the witness chair.

15 THE WITNESS: Okay.

16 THE COURT: Remain standing. Face the jury and the
17 deputy there. Raise your right hand to be sworn.

18 (Witness sworn.)

19 THE WITNESS: I swear.

20 THE CLERK: Please take a seat.

21 THE COURT: All right. When you're situated, get
22 yourself close to the microphone, please.

23 THE WITNESS: All right.

24 THE COURT: Tell us your full name, and please spell
25 it all.

Olson - D

1 THE WITNESS: Peter Douglas, Olson. P-E-T-E-R,
2 D-O-U-G-L-A-S, O-L-S-O-N.

3 THE COURT: And you must slow down as you testify.
4 All of us are trying hard to understand. But especially here
5 we have translations going real time, so please slow down.

6 Go ahead, Counsel.

7 DIRECT EXAMINATION

8 BY MS. GOLOBORODKO:

9 Q. Good morning.

10 A. Good morning.

11 Q. Could you please tell the Court how you're employed?

12 A. I'm a deputy for the Washington County Sheriff's Office,
13 and have been since July 31st of 1998.

14 Q. Now, as a deputy with the Washington sheriff's office, what
15 are your general duties?

16 A. Right now I'm in patrol. I was assigned to the Westside
17 Interagency Narcotics team with a narcotic K-9.

18 THE COURT: You do need to slow down.

19 THE WITNESS: Sorry.

20 BY MS. GOLOBORODKO:

21 Q. You said you had a K-9?

22 A. Yes, ma'am.

23 Q. How long have you been a K-9 officer?

24 A. Six years. I retired him in July of this year.

25 Q. And were you working with your K-9 -- what's his name?

Olson - D

1 A. Tau, T-A-U.

2 Q. Were you working with him on April 2nd, 2014?

3 A. Yes, I was.

4 Q. Now, how long had you and Tau -- or Tau been working
5 together?

6 A. About four-and-a-half years, going on five years.

7 Q. In terms of drug interdiction of traffic stops, what are
8 some of the indicators of drug trafficking that you have been
9 trained to look for?

10 A. Well, during the traffic stop or prior to the traffic stop?

11 Q. Just during.

12 A. During the traffic stop?

13 The driver's nervousness, things that don't look
14 normal; where they're coming from. If they're coming from a
15 long distance, they have very limited amount of items in their
16 car; maybe a lot of fast food like they've been traveling a
17 long distance; maybe pieces of the car that look like it had
18 been taken apart and put back together, those type of things.

19 Q. I don't really want to get into details.

20 So could you just briefly summarize what kind of
21 training you and Tau have had?

22 A. In 2009, we -- we completed a 240-hour K-9 narcotic
23 detection school through the Beaverton Police Department. We
24 had ongoing training every month. Minimum of 16 hours. And
25 then we went to conferences about every six months.

Olson - D

1 Q. Now, just in a typical traffic stop involving drugs, please
2 describe what you and Tau would do.

3 A. We would begin searching the exterior of the vehicle for
4 the odor of narcotics. So I would instruct my dog to start
5 wherever it was safe for him to start, and he would work low as
6 we worked a counterclockwise pattern around the vehicle for the
7 odor of narcotics.

8 Q. Now, what if you found -- or what if he smelled narcotics
9 on the outside?

10 A. He -- he's trained to get as close as he possibly can to
11 that odor and then alert. Which his alert was a scratch. He
12 would scratch at the odor.

13 Q. We -- what do you mean when you say "alert"?

14 A. The -- the alert is the final response. So he would -- he
15 would -- I would call it an alert when he would go to -- in the
16 final response, and he would begin scratching to the closest
17 point he could get to that odor he's trying to find.

18 Q. So when you say "alert," you mean he smells a narcotic?

19 A. Yes, ma'am.

20 Q. Okay. And if he smelled something on the outside, would
21 you and he go in the car?

22 A. Yes, ma'am.

23 Q. Okay. So have you had any experience in assisting the WIN
24 team with drug investigations?

25 A. Yes.

Olson - D

1 Q. To what extent?

2 A. Most of my time was dedicated to WIN. They were my first
3 assignment. But I also went out and did patrol stuff over the
4 last six years.

5 Q. And did Tau have any experience with them as well?

6 A. Yes. He's been with me ever since I was attached to the
7 WIN team.

8 Q. So were you involved in the WIN team investigation in late
9 March and early April of 2014 with the traffic stop on April
10 2nd?

11 A. Yes, ma'am.

12 Q. Where was that stop?

13 A. It was on -- in Milwaukie, on Highway 229, I believe.

14 Q. And what kind of car was it?

15 A. It was a 2000 -- 2001 Honda Civic.

16 Q. Do you remember what color?

17 A. It was -- I wrote down it was green.

18 Q. And what time was the stop?

19 A. That was at 5:12 in the evening.

20 Q. And did you deploy Tau?

21 A. I did.

22 Q. What happened?

23 A. He alerted to the exterior of the vehicle. We went inside
24 the vehicle and he also alerted in there. We found a
25 substantial amount of heroin.

Olson - D

1 Q. Where did you find it?

2 A. The airbag had been removed and a little basket had been
3 made inside where the airbag belongs, and the heroin was laying
4 in there.

5 Q. Which airbag?

6 A. On the passenger side, front passenger side.

7 Q. Now, earlier, you testified about things that you have been
8 trained to look for in vehicles when it comes to drugs.

9 A. Yes.

10 Q. You mentioned alterations, things that don't look like
11 they're part of the car.

12 Did you observe any of those signs with the Honda?

13 A. I did. The rear bumper where Tau had alerted to, one of
14 the times he had alerted to on the exterior of the vehicle was
15 different screws had been placed in the -- the plastic bumper
16 that goes around on the back of the vehicle.

17 Q. Now, what did you do after the traffic stop?

18 A. I went to the location of the search warrant and assisted
19 them with searching the house with my dog.

20 Q. Which search warrant?

21 A. The search warrant at 11759 Southeast 64th Avenue,
22 Milwaukie, Oregon.

23 Q. And can you describe how you and Tau searched the home?

24 A. We began -- this particular one, we went in, and we did the
25 family room first. I usually let my dog dictate where he wants

Olson - D

1 to search a residence, as long as it's safe to do so. But
2 there was other people, so we -- we began in the family room of
3 the -- this residence.

4 Q. So were there any places in that home, in particular, that
5 Tau alerted to?

6 A. Yes, the family room. There was a laundry room off of the
7 family room.

8 Q. Now, I'm going to show you Government Exhibit 78. It's
9 already been admitted.

10 A. Okay.

11 THE COURT: It will be on your screen to the left,
12 sir.

13 BY MS. GOLOBORODKO:

14 Q. Do you recognize this?

15 A. Yeah. That was the plastic bag -- like a grocery plastic
16 bag on the side of the washer/dryer that Tau had alerted to.

17 Q. Do you know what was in the bag?

18 A. There was other plastic bags inside, but I could smell
19 heroin.

20 Q. So that -- okay. Now, while at the scene, were you able to
21 determine, I guess, what was in it? Like you said, there was a
22 smell. Could you see what was in it?

23 A. I continued searching. I mean, obviously, I looked in it.
24 I could see some plastic bags or vacuum-type bags inside there.
25 But I continued searching with my dog.

Olson - D

1 Q. All right. Now, did you also run Tau through the bedroom
2 areas?

3 A. Yes, I did.

4 Q. And were there any alerts?

5 A. Yes. In the back bedroom -- and we usually label them, but
6 I didn't put it in my report. It was the back bedroom that
7 faced the back of the house. I -- I got three alerts in
8 that -- that room. It had a bathroom that was attached to it.

9 Q. What did you find with those alerts?

10 A. In between the mattress I found some cash. There was an
11 alert in the closet up high where we found more cash, and there
12 was another alert.

13 Q. How about any other rooms? You mentioned there were some
14 bedrooms and then a living area.

15 A. Yeah, there was two other bedrooms and a living room. And
16 there was -- let me see. There was -- there was no interest in
17 Tau searching those rooms. So we have people come behind us
18 and search behind us. So we were -- we're the initial
19 searchers, with the dog.

20 Q. All right. Now, finally, did you run Tau in the backyard?

21 A. I did.

22 Q. And why?

23 A. There was some information that was relayed to me that
24 maybe there was some narcotics hidden in the backyard.

25 Q. And did -- did you find anything?

Olson - X

547

1 A. No. Tau showed interest to a -- a tree that was in the
2 backyard. But I didn't get an alert to search in the area
3 where it was located.

4 MS. GOLOBORODKO: No further questions.

5 THE COURT: Thank you.

6 Mr. Andersen?

7 MR. ANDERSEN: No questions.

8 THE COURT: Thank you.

9 Mr. Sepp?

10 MR. SEPP: Thank you. Thank you, your Honor.

11 CROSS-EXAMINATION

12 BY MR. SEPP:

13 Q. Just to confirm, the room -- the three alerts that Tau
14 noted to, that was -- could we call it the master bedroom?

15 A. Yeah, that's what I would call it.

16 Q. Okay. And then nothing in the other two sub bedrooms?

17 A. Or the living room.

18 Q. Or living room.

19 MR. SEPP: Okay. Thank you.

20 THE COURT: Any other questions?

21 MS. GOLOBORODKO: No, your Honor.

22 THE COURT: I'm sorry. Yes. Ms. Goloborodko, any
23 other questions?

24 MS. GOLOBORODKO: No, your Honor. Thank you.

25 THE COURT: All right. You're free to go, sir.

Miller - D

1 THE WITNESS: Thank you, ma'am.

2 THE COURT: Go ahead.

3 MS. BOLSTAD: The Government next calls Detective Tim
4 Miller.

5 THE COURT: Please come all the way to the witness
6 chair and remain standing.

7 Face the jury and the deputy there. Raise your right
8 hand to be sworn.

9 (Witness sworn.)

10 THE WITNESS: I do.

11 THE CLERK: Please take a seat.

12 THE COURT: Bring yourself close in to the
13 microphone, please.

14 Tell us your full name, and spell all of it.

15 THE WITNESS: Timothy Keith Miller.

16 T-I-M-O-T-H-Y, K-E-I-T-H, M-I-L-L-E-R.

17 THE COURT: Thank you.

18 Counsel.

19 DIRECT EXAMINATION

20 BY MS. BOLSTAD:

21 Q. Where do you work?

22 A. I work for the Washington County Sheriff's Office.

23 Q. How long have you been there?

24 A. About 16-and-a-half years.

25 Q. And what's your assignment?

Miller - D

1 A. Currently, I am a detective in our investigations division,
2 assigned to work in child abuse cases.

3 Q. Back in 2014, March, April, what were you working on then?

4 A. I was assigned to the Westside Interagency Narcotics team,
5 or the WIN team, as a narcotics investigator.

6 Q. Have you, in your experience with WIN, have you worked on
7 overdose investigations?

8 A. Yes.

9 Q. And have you received training to become a law enforcement
10 officer? I don't need you to go through all of it, but have
11 you?

12 A. Yes.

13 Q. And could you tell the jury about your specific training
14 when it comes to surveillance?

15 A. Well, I've -- I was assigned to the Westside Interagency
16 Narcotics team for about -- or for about five years.

17 During that time, I received hundreds of hours of
18 training in surveillance, surveillance techniques. I have
19 actually instructed new students and investigators in
20 surveillance techniques.

21 Prior to that, prior to my assignment at WIN, I was
22 with the Regional Organized Crime and Narcotics task force, or
23 ROCN task force, for three years; which was a multi-agency task
24 force that worked in Portland and Multnomah and Washington
25 County, Columbia County, working high-level narcotics cases.

Miller - D

1 And I received a lot of training sur -- in surveillance
2 techniques during my tenure there, as well.

3 Q. Approximately how many surveillance operations have you
4 been involved in?

5 A. Probably several hundred.

6 Q. Were you involved in an investigation of an overdose death
7 of Mr. Delong in late March 2014?

8 A. Yes.

9 Q. What was your role?

10 A. I was assisting the case agents, again, with surveillance,
11 as they developed their investigation.

12 Q. Did you conduct surveillance on March 31st, when Mr. Baker
13 ordered drugs from his source?

14 A. Yes.

15 Q. Where did you conduct surveillance?

16 A. The surveillance was conducted in and around the 7-Eleven,
17 which is located at the corner of Harmony Road and I think it's
18 Lynwood Avenue in southeast, in Clackamas.

19 The case agents in this case had developed
20 information from their informant or the person that -- that
21 they were interviewing at the time, that this person received
22 their drugs or did a lot of their drug transactions in that
23 particular parking lot.

24 Q. And the jury's heard from Mr. Baker. So -- is the
25 informant you're talking about, is that Mr. Baker?

Miller - D

1 A. Yes. Yes.

2 Q. Okay. On March 31st, did Mr. Baker go to that 7-Eleven on
3 Harmony?

4 A. Yes.

5 Q. Do you know approximately what time he arrived in the lot?

6 A. I think it was around 10:39 in the evening.

7 Q. And with the surveillance, what were officers looking for
8 at that 7-Eleven?

9 A. We had received information from the case agents not only
10 about the location but potential cars that the -- the source of
11 drugs may show up in, which was, I think, a blue Honda and a --
12 a Nissan Pathfinder -- or not a Pathfinder but a Nissan -- some
13 sort of S.U.V.

14 Q. And did you have a color for that S.U.V.?

15 A. Red.

16 Q. Did you see any vehicle like either of those two in the
17 area?

18 A. Yes. At one point, I think it was a couple minutes later,
19 at about 10:41 p.m., the surveillance units had radioed that
20 the CI was -- or, I'm sorry, Mr. Baker was now in a red S.U.V.
21 And that red S.U.V. had left the parking lot of the 7-Eleven.
22 And we had watched it do a short trip around the neighborhood,
23 around that 7-Eleven, before returning and dropping the --
24 dropping Mr. Baker back off in the parking lot.

25 Q. How long did that short trip take?

1 A. Probably a minute.

2 Q. And then did surveillance units follow that red S.U.V. from
3 the area after Mr. Baker got out?

4 A. Yes. It -- so we followed it to -- north, as I think it
5 left on Lynwood. And then it turned on a road called Furnberg,
6 and then ultimately turned north on 64th Avenue.

7 And by the time surveillance units were able to see
8 the vehicle, it was pulling into a garage. But the garage was
9 then lowering, so we weren't able to get the license plate on
10 the vehicle.

11 Q. How long did it take for that S.U.V. to go from the
12 7-Eleven to the garage?

13 A. Again, it was probably only about a minute.

14 Q. And was that garage located at location 1, the house on
15 64th?

16 A. Yes. The -- after -- after the vehicle had gone in the
17 garage, at one point I had driven by and multiple people had
18 driven by to get the -- to confirm the numbers that were on the
19 house.

20 Q. And did you relay the numbers on the house to the
21 detectives working the case?

22 A. Yes.

23 Q. Okay. I would like to move on to April 2nd, 2014.

24 Did you help with surveillance on that date?

25 A. Yes.

Miller - D

1 Q. I'm going to show you Government's 64. It's marked and
2 admitted.

3 Do you recognize this location?

4 A. Yes, that's 11759 Southeast 64th.

5 Q. During the operation on April 2nd, were you in radio
6 communication with your team?

7 A. Yes.

8 Q. And why -- tell the jury why it's important to have that
9 radio communication.

10 A. Well, when you have a lot of -- a lot of components that
11 are going on in the case, you have a -- oftentimes you'll have
12 surveillance units set up at multiple locations, so -- to be
13 able to hear what's going on at one location and be aware that
14 that may affect the location that you're watching is important.

15 Q. And so where were you to -- at the start of the day on
16 April 2nd, with surveillance?

17 A. I started to the north of this residence. It's a dead-end
18 street, several houses to the north. I was just parked along
19 the side of the road, watching the front of this residence.

20 Q. What time of day were you watching the residence?

21 A. I believe we started out -- I don't remember the exact time
22 but it was in the -- probably midafternoon, early afternoon
23 time.

24 Q. And did you receive information from Detective McNair that
25 informed you about what to be on the lookout for?

Miller - D

1 A. Yes. We received information. We were basically looking
2 for movement. I knew that Detective McNair was going to be
3 meeting with Shane Baker again, and they were going to be
4 ordering an amount of drugs from the -- from the suspects. And
5 so we were just watching -- once those phone calls were made,
6 we're in a position to watch and see what movement happens
7 after that and note those observations.

8 Q. Okay. And so what did you see after you received
9 information that the call had been made?

10 A. At some point after that, surveillance, it was at a
11 different location that was off of King Road. I remember that
12 someone had radioed there was a green Honda Accord that had
13 left that location. And within the amount of time that it
14 would have taken to drive from there to where I was at, it
15 arrived at this location.

16 Basically, it pulled on to 64th Street from Furnberg.
17 Pulled up to the house like it was going to go in -- pull into
18 the house -- or park in front of the house but it stopped. And
19 then they drove right up to, basically, where I was parked.

20 Q. So before we get there, is what you're saying that you
21 heard information from location at King Road?

22 A. Yes.

23 Q. I'm going to show you what's Government's demonstrative 1,
24 to give a map to you to refer to.

25 So you were stationed where?

Miller - D

1 A. I was at location 1, off of 64th.

2 Q. And after Mr. Baker placed the call, what did you hear
3 happened at location 2?

4 A. That there was a green Honda Accord that had left that
5 location and someone, again, had radioed the surveillance team
6 that. And then shortly after that, I observed a green Honda
7 Accord arrive at location 1.

8 Q. Okay. And so you mentioned it pulled close to you.

9 What happened?

10 A. It pulled up right alongside me, and the occupants in the
11 car looked at me. There was a little bit of awkwardness there.

12 And then they basically just turned around, drove to
13 the south end of the street, and then went east on Furnberg.
14 I, of course, relayed this information to -- to units that were
15 on the surveillance team.

16 And then shortly after that there was three
17 individuals -- Hispanic individuals that walked up to the --
18 that came from that direction and walked up to location 1.

19 Q. So did you see where the green Honda Civic was when those
20 three individuals walked up to location 1?

21 A. No.

22 Q. Okay. Going back to this moment where they pull up to you,
23 you said it was awkward.

24 Were you in a marked police vehicle?

25 A. No.

Miller - D

1 Q. Were you in police uniform?

2 A. No.

3 Q. Could they see into your window?

4 A. It would have been difficult. It had a lot of tint, I
5 believe, the vehicle I was in.

6 Q. Contact-wise, were there a lot of cars with people sitting
7 there in the afternoon? Or paint a picture for the jury, so
8 they know why that was awkward for you.

9 A. It's -- it's a residential neighborhood. It's a dead-end
10 road.

11 The -- there would be no reason for you to drive down
12 to the dead-end road unless you lived at the dead-end road.
13 Because if you -- if you see on the map here, there's just
14 basically a big field where the road dead-ends. There's
15 nothing else there.

16 And -- and knowing -- after seeing the -- the car
17 stop and pause in front of the residence and then drive to
18 where I was, obviously led me to believe that they were
19 interested in why I was -- why somebody would have been parked
20 there.

21 Q. What happened after you saw those three males approach
22 location 1 on foot?

23 A. Well, from my vantage point, they walked up the driveway.
24 I assumed went in the house. And then it was sometime after
25 that -- shortly after that -- there was two individuals that I

Miller - D

1 saw leave from the direction of the house and, again, walk down
2 to Furnberg Street and then walk east. So I relayed that
3 information over -- over the radio.

4 I knew at the time that the -- the plan was to
5 eventually write -- apply for a search warrant for this
6 location, so then it becomes like a tactical -- investigators
7 or law enforcement that's going to end up serving the search
8 warrant on this house. Like to know how many people are
9 potentially in the house that we may encounter when we serve
10 the search warrant.

11 So there's two individuals that left, leaving what
12 we -- or what I believed was still one in the house.

13 Q. And where did the green Honda Civic go?

14 A. I had heard surveillance units say that it had parked near
15 a park near Furnberg Park, which is maybe about a block and a
16 half, two blocks away from the residence. And then
17 surveillance units followed that vehicle.

18 The initial plan that been relayed to me was -- is
19 that the transaction -- that the case agents had ordered the
20 drug transaction was to take place, again, at the 7-Eleven at
21 Harmony Road and Lynwood Road, I think, or Avenue. I'm not
22 sure. It's Lynwood, in Clackamas.

23 I had heard investigators relay that the location had
24 been changed, and I believe they had changed it to a Lowe's
25 store that was off of highway 224.

Miller - D

1 And at some point in between, the plan was that law
2 enforcement would pull the car over.

3 Q. And do you know if that happened or not?

4 A. Yes.

5 Q. Were you involved in that traffic stop?

6 A. No.

7 Q. So did you stay at location 1?

8 A. Yeah, I stayed there for -- I don't know. It was a while
9 after that. And then left and then swapped out with somebody
10 else, basically, at that point to go because I was assisting
11 with the entry for the search warrant that was now signed and
12 ready to be served.

13 Q. Which location was that later search warrant for?

14 A. Location 1.

15 Q. Okay. And so did you participate in the entry and search
16 of location 1?

17 A. The entry and initial securing of the residence, yes, I was
18 involved in that and then the initial walk through.

19 Q. Okay. And then what happened next for you?

20 A. They -- the case agents requested that somebody go to the
21 King Road address and get eyes on, as we call it, or basically
22 get to a spot where we can observe that residence, which was an
23 apartment.

24 Q. Do you -- oh, I'm sorry. Go ahead.

25 A. Oh, I was just going to say, it was my understanding there

Miller - D

1 was, again, discussions that -- I wasn't involved with them --
2 that there -- there may be an application for a search warrant
3 for that residence as well.

4 Q. Do you remember approximately what time you went to
5 location 2?

6 A. I remember I got there about 6:40 in the evening.

7 Q. And what was your -- did you have an assignment or a label
8 for your role?

9 A. Well, basically my role was to get eyes on or, you know,
10 make observations of 7915 Southeast King Road, apartment No. 2.

11 Q. Okay. I'm going to show you Government's Exhibit 101.

12 Is this the location you were surveilling?

13 A. Yes.

14 Q. And were you able to take notes while you're conducting
15 surveillance?

16 A. No.

17 Q. So how do you keep track of what you're seeing?

18 A. Usually we have a note taker assigned. Somebody who --
19 whose job is -- they're -- they're typically not, you know, in
20 there making observations they're just writing down what other
21 people are observing.

22 Q. Could you tell the jury approximately where you were
23 situated to conduct surveillance?

24 A. Well, the apartment complex parking lot is kind of -- it's
25 kind of like a U, and I was about in the middle, facing east.

Miller - D

1 Nosed in, facing east. And then I was in the back of my
2 vehicle, looking out a quarter panel window to the south, at
3 the apartment.

4 Q. What did you see after your arrival at location 2?

5 A. I remember there was a silver Nissan Armada that was parked
6 out front. There was a gold Chevy -- I think it was an Astro
7 van. In fact, it may be the same van that's in this picture
8 here.

9 And those two vehicles were side by side. At some
10 point I saw the person we were labeling at S1.

11 Q. What does S1 mean?

12 A. S1 is subject one. It's -- S1, subject one, person 1.
13 It's basically how we reference people that we've identified in
14 the surveillance over the radio. So we're not going say, like,
15 first names or last names, or anything like that. We'll just
16 get a list of people and then just go, S1, S2, S3, S4. And so
17 everyone has the information. They can call out who it is
18 they're seeing.

19 Q. And in terms of location 2, how many subjects were involved
20 in your surveillance?

21 A. There was only one, as far as I knew.

22 Q. So did you -- how did you know what S1 looked like?

23 A. At some point, the case agents had given us a picture. I
24 don't remember if it was a printed out copy or if it was
25 e-mailed or texted or -- I don't remember that but --

Miller - D

1 Q. And who -- what was the name of subject 1?

2 A. I believe it was Fabian Sandoval.

3 Q. And so did you see Mr. Sandoval at that location?

4 A. Yes.

5 Q. Tell us about that.

6 A. Shortly after I arrived there, there was a Hispanic
7 gentleman who was wearing a black -- like a sweatshirt or
8 pullover-type jacket that had the L.A. Dodgers' symbol on the
9 front of it. And I observed that person entering and exiting
10 the front door of location 2.

11 Q. And would that be apartment 2?

12 A. Yes.

13 Q. What was he doing?

14 A. He appeared to be working on the vehicles that were parked
15 out front, going in between the two. At one point I remember
16 the hood was up on the silver Armada. You know, I don't know
17 exactly what they were doing. Basically working on the car, I
18 guess.

19 Q. And approximately what time were these observations of
20 subject 1?

21 A. Again, I first observed him there around 6:40 in the
22 evening, right up until the time that I left, which was, I
23 think, around 8:20, so --

24 Q. Okay.

25 A. A little under two hours.

Miller - D

1 Q. And when you say working on these vehicles, do you have
2 anything specific?

3 A. Just, you know, again, with the hood up on the Armada,
4 under the hood. You know, in between the vehicles. I could
5 see that he was in between them, the doors were open. Just --
6 I don't know what exactly he was doing in between the vehicles.
7 Or walking around and going in and out of the house during the
8 time I was there.

9 Q. So it sounds like you were at this location at least
10 between 6:40 and 8:20-ish?

11 A. Yes.

12 Q. And during that time frame, how many times did Mr. Sandoval
13 go into the apartment?

14 A. I would say six or seven times.

15 Q. How many times did he go out?

16 A. Probably six or seven.

17 Q. Did you see any other individuals going into or out of
18 location 2?

19 A. Yes. At one point there was a black female that had looked
20 like she had come from across the street. And she was carrying
21 a clipboard, or something to that effect. She at one point had
22 walked into the apartment. I -- my -- I don't know if I can
23 say what I assumed what she was --

24 Q. Let's not assume.

25 A. Okay. I -- I don't know what her role was. At one point

Miller - D

1 there was a younger Hispanic female who came out of the
2 apartment, and she was carrying a white plastic trash bag. And
3 she went over to the dumpster, which is basically right --
4 right -- right out the -- the door and across the parking lot.
5 And put some -- put the trash in there. And then went back in
6 the apartment.

7 Q. Do you what time that took place?

8 A. I think that was around 7:25 p.m. in the evening.

9 Q. Is that an observation you would have called out to the
10 person taking notes for you?

11 A. Yes.

12 Q. And had you reviewed those notes later?

13 A. Yes.

14 Q. And is that dumpster trip-documented?

15 A. Yes.

16 Q. And what time did it take place, according to the notes?

17 A. 7:25 p.m.

18 Q. Why did that stand out to you?

19 A. Well, obviously the -- there was a car that had come from
20 this location and went to the location where we were now
21 serving a search warrant on, so don't know if that person
22 has --

23 MR. ANDERSEN: Your Honor, I object. I think he's
24 just speculating about --

25 THE COURT: The objection is sustained, jurors.

Miller - D

1 Disregard the answer. Rephrase the question, if you want to
2 pursue it, to elicit a response for which the witness has
3 personal knowledge.

4 BY MS. BOLSTAD:

5 Q. Detective Miller, during your surveillance here, how
6 many -- how many dumpster trips did you observe from apartment
7 2?

8 A. Two.

9 Q. Okay. And did those trips -- were those significant to
10 you?

11 A. Yes.

12 Q. Why?

13 A. Again, we're preparing -- or case agents are applying for a
14 search warrant for this location, so we're worried about the
15 obvious destruction of evidence.

16 Q. So you've mentioned 1, with a female. What was the other?

17 A. At some point Mr. Sandoval himself came out of the
18 apartment and walked up to the dumpster area. And then, again,
19 proceeded to walk around my car and appeared to be interested
20 in -- in my car.

21 Q. Did that make you nervous?

22 A. Yes.

23 Q. Did you talk to him?

24 A. No.

25 Q. Do you know what time Mr. Sandoval walked around your car?

Miller - D

1 A. I don't. I would have to refer to my notes and when
2 exactly that was. It was after the -- I know it was after the
3 Hispanic female had taken the trash bag to the dumpster.

4 Q. Which was at 7:25?

5 A. Yes.

6 Q. And approximately what time was his last entry into
7 apartment 2?

8 A. I -- it was sometime after eight o'clock because at that
9 point I had -- I think it was around 8:22. I had switched out
10 with another investigator. "Switched out" meaning there was
11 another investigator who took my spot, basically, where I was
12 parked, to continue the observation.

13 Q. Do you know what time agents executed the search warrant at
14 location 2?

15 A. I don't remember the exact time. I know it was sometime
16 after nine o'clock.

17 Q. And did you participate in the search?

18 A. Yes.

19 Q. Was Mr. Sandoval inside or outside when that search
20 happened?

21 A. He was inside the residence when we executed the search
22 warrant. Whether -- I don't know if he stayed inside the
23 residence the whole time we were searching because I was
24 upstairs in a bedroom, and I don't know where Mr. Sandoval was.

25 Q. And did you seize any evidence?

Miller - D

1 A. Yes.

2 Q. Do you remember what you seized?

3 A. Yes. This was a yellow piece of paper with what I thought
4 were drug records. It was found in a shoe box in the closet.

5 Q. Which closet?

6 A. The master bedroom closet.

7 Q. And whose room was that? Do you know?

8 A. I believe that was Mr. Sandoval's room.

9 Q. I'm going to show you Government's 108.

10 Do you recognize this?

11 A. Yes.

12 Q. Is this what you seized?

13 A. Yes.

14 Q. Why did you think this was a drug record?

15 A. Well, because I know from my training and experience that
16 drug dealers, drug traffickers, will oftentimes -- based on the
17 number of customers they have -- keep track of amounts that
18 they either owe or owe to them; for, you know, either amounts
19 of dope or amounts of money.

20 So just -- looking at the piece of paper and having,
21 you know, a total on there and then minus a certain amount and
22 then minus another amount, kind of a running log, so to speak,
23 of -- of, like I say, this could be, you know, what they owe
24 their supplier, what a customer owes them.

25 MS. BOLSTAD: I have nothing further on direct.

Miller - X

567

1 THE COURT: Cross.

2 MR. ANDERSEN: Thank you.

3 CROSS-EXAMINATION

4 BY MR. ANDERSEN:

5 Q. Now, Detective Miller, you mentioned that, I think,

6 Detective Davis -- I'm sorry. Is it detective or -- is it --

7 are you a detective?

8 A. Yes.

9 Q. You know -- you mentioned Detective Davis would also take
10 notes as you made observations. Is that what you were saying?

11 A. Correct.

12 Q. Now, have you reviewed Detective Davis's notes?

13 A. Yes.

14 Q. Is there any notation on those notes about who you were
15 calling S1 coming around the -- around your car or going to the
16 dumpster?

17 A. Can I look at the notes?

18 Q. Certainly. Do you have it?

19 A. Yes. I'm sorry. What was your question?

20 Q. I'm just wondering if you can see if there's any notation
21 about that?

22 A. Oh, you mean like who is S1?

23 Q. No, just whether or not S1 came and circled your car, or
24 anything of that nature.

25 A. Yeah, I -- let's see. (Pause, referring.) At eight

Miller - X

1 o'clock, Detective Davis noted that I had said S1 is north,
2 through the parking lot, out of my sight. That was when he
3 actually walked out to the dumpster, by the dumpster, by my
4 car, to the north, and was out of my sight at that point.

5 So it was at that point.

6 Q. Okay. So there's no notation about walking around your
7 car, or anything like that?

8 A. No.

9 Q. You also mentioned that the person you were calling S1 was
10 working on the -- on -- what -- you assumed he was working
11 on -- on an Armada, the silver Armada. Right?

12 A. Yes.

13 Q. And you were saying he was kind of all around, up and down,
14 under the hood --

15 A. Yes.

16 Q. -- of that car?

17 And you tried to start it at one point?

18 A. Yes.

19 Q. Now, you mentioned that you found the yellow paper in the
20 shoe box in the closet. Do you remember what else was in that
21 shoe box?

22 A. I don't.

23 Q. Do you remember any -- anything about the general nature of
24 whatever was in the shoe box?

25 Was there anything else in there, do you recall? Or

Miller - X

569

1 you just have no recollection?

2 A. I don't recall.

3 MR. ANDERSEN: Thank you. That's all.

4 THE COURT: Cross?

5 MR. SEPP: I have nothing for this witness, your
6 Honor.

7 THE COURT: Redirect? Redirect?

8 MS. BOLSTAD: Nothing further, your Honor. Thank
9 you.

10 THE COURT: Thank you, sir. You're free to go.

11 THE WITNESS: Thank you.

12 THE COURT: Give me an estimate on timing for the
13 next witness, please.

14 MS. BOLSTAD: I think 20 to 30 minutes, your Honor.

15 THE COURT: Then we'll recess for lunch now, and
16 we'll aim to be back in session at just a little bit after
17 1:00. I want to be sure you have a full hour for lunch. But
18 as soon as you're back, we'll be ready to go.

19 All right, jurors?

20 Same instructions. Please enjoy the lunch. Leave
21 your notes on the chair. Watch your step as you go out.

22 (Jurors exit, 11:55 a.m.)

23 THE COURT: Are there matters for the record now, for
24 the Government?

25 MS. BOLSTAD: No, your Honor.

Colloquy

1 THE COURT: Counsel?

2 MR. SEPP: Nothing, your Honor.

3 THE COURT: All right. So please be ready to go at
4 least five minutes before 1:00, and I want an update at that
5 point on jury instructions. Okay?

6 Thank you.

7 (Recess taken.)

8 (Court resumes, 1:05 p.m.)

9 THE COURT: Thank you, everyone. Please be seated.

10 I've been reviewing the Government's submission,
11 which is filing 199, on the foreseeability question.

12 I don't believe we have enough time, before we have
13 to continue with the jury, to take it up right now, and so I
14 don't want to take time right now unless the parties have
15 already agreed it's a proper statement of the law and everyone
16 uniformly requests that I modify the existing drafts
17 accordingly. If so, we'll take a few minutes to do that and
18 then generate new drafts for your consideration.

19 Ms. Bolstad?

20 MS. BOLSTAD: This is my understanding.

21 I conferred with the defense prior to the Court
22 taking the bench. I don't believe that either defense has an
23 objection to the Government's request to add a special verdict
24 question on reasonable foreseeability. I tried to clarify it
25 was not the same as finding an element.

Colloquy

1 THE COURT: I have a concern about guiding the jury
2 with respect to the standard of reasonably foreseeable. You
3 didn't offer a definition of what that means, what is
4 reasonably foreseeable. And I envision that -- you defined it
5 by defining -- by using the term in the definition. You didn't
6 provide me with any suggested description.

7 So I'm going to take a look at that myself in the
8 interim before we go farther.

9 MS. BOLSTAD: Yes.

10 THE COURT: In the meantime, Mr. Andersen and
11 Mr. Sepp, do you have a position on this Government request?

12 MR. ANDERSEN: Your Honor, this does go to some of
13 the issues I have already previously raised about what the
14 elements of the specific offenses are. And reserving those
15 issues that I've already raised, I don't have any -- I mean,
16 understanding the rulings of the Court on those issues, I don't
17 have any objection to this.

18 THE COURT: Do you think the term "reasonably
19 foreseeable" needs to be defined? Or -- or does that have a
20 common meaning that rational jurors can apprehend in the
21 context of this discussion?

22 MR. ANDERSEN: Well, I think it does have a generally
23 understood definition, but I do think it is a specific legal
24 term as well. I think that it could -- it could use a sentence
25 or two for explanation, just on what it actually means.

Colloquy

572

1 So I guess the answer is, yes, I think that it could
2 be --

3 THE COURT: Well, I'm willing to ask my law clerk to
4 look for definitions. I'm not sure I can generate that which
5 the Government is requesting.

6 Yes.

7 MS. BOLSTAD: And the Government -- I looked for a
8 definition in the model instructions under any instruction.
9 It's never defined, and I take that to mean it's because it has
10 a common meaning.

11 I looked at the wire fraud instruction. It was the
12 most helpful. It's 8.124.

13 THE COURT: Okay. We'll look at it.

14 Mr. Sepp, what would you like to add?

15 MR. SEPP: I'm in agreement.

16 THE COURT: Your next witness is who?

17 MS. BOLSTAD: Tony Carley. He's here and ready to
18 take the stand.

19 THE COURT: Go ahead and approach. Take a seat or
20 stand near the witness chair.

21 Are there matters we need to take up, apart from
22 instructions, off -- outside the jury's presence right now?

23 MS. BOLSTAD: Briefly, the Government has showed
24 defense counsel several summary exhibits we intend to offer
25 through the testimony of Detective Andersen after Deputy

Colloquy

573

1 Carley, agents Blankenship, and Riley.

2 So she will be the fourth witness of the afternoon.

3 THE COURT: All right.

4 MS. BOLSTAD: I did not hear any objections from the
5 defense about the summaries.

6 MR. ANDERSEN: Your Honor, assuming that that is the
7 basis -- or that Detective Andersen will lay the basis for
8 those summaries, I think that we have no objection to them.

9 THE COURT: All right.

10 MR. SEPP: That was my understanding of the
11 conversation.

12 THE COURT: Thank you.

13 So all of us will stand when the jurors come in.
14 Everyone else will be seated.

15 Please stay standing, so you can be sworn.

16 THE WITNESS: Yes, your Honor.

17 THE COURT: Thank you.

18 (Pause.)

19 (Jurors enter, 1:11 p.m.)

20 THE COURT: Thank you, everyone. Please be seated.

21 Jurors, the Government's next witness is before you.

22 Sir, would you face the jurors and the deputy. Raise
23 your right hand to be sworn.

24 (Witness sworn.)

25 THE WITNESS: Yes, I do.

Carley - D

574

1 THE CLERK: Please take a seat.

2 THE COURT: Bring yourself around, closely to the
3 microphone, please. Closer.

4 Tell us your full name, please, and spell all of it.

5 THE WITNESS: My name's Anthony Carley.
6 A-N-T-H-O-N-Y. Last of Carley, C-A-R-L-E-Y.

7 THE COURT: Thank you.

8 Counsel.

9 DIRECT EXAMINATION

10 BY MS. BOLSTAD:

11 Q. Good afternoon, Deputy. Could you please tell the jury how
12 you're employed?

13 A. I work for the Washington County Sheriff's Office.

14 Q. How long have you been there?

15 A. Since 2005.

16 Q. And do you have a current assignment?

17 A. I'm currently assigned as a deputy to the Washington County
18 Sheriff's Office.

19 Q. Back in March of 2014, where were you assigned?

20 A. I was assigned as a task force officer, assigned to the
21 DEA, the Portland district office.

22 Q. And explain to the jury, what does that mean?

23 A. So I was -- I was previously assigned to the Westside
24 Interagency Narcotics team through the sheriff's office in
25 Washington County, and then I was moved into the position of a

Carley - D

1 task force officer assigned to the DEA, the Portland district
2 office of the DEA, which is still closely working with the
3 Westside Interagency Narcotics team. But specifically my
4 full-time duties were with the special agents with the DEA in
5 Portland as a drug task force.

6 Q. And would you help the DEA investigate drug cases involving
7 Washington County?

8 A. Yes, I would.

9 Q. Okay. How long have you been with the WIN team before you
10 became a TFO?

11 A. A little over three years. Approximately three years.

12 Q. And by TFO, I mean task force officer. Is that what you --

13 A. Yes, ma'am.

14 Q. Could you estimate how many narcotics investigations you
15 have taken part in over the course of your career?

16 A. I would estimate it to be over -- over a hundred.

17 Q. And have you had the opportunity to speak with suspects in
18 those cases?

19 A. Yes, I have.

20 Q. Were you involved in a **Len Bias** investigation in April
21 2014?

22 A. Yes, I was.

23 Q. How did you become involved?

24 A. Detective Andersen, with the Westside Interagency Narcotics
25 team, contacted me and advised me of their investigation up to

Carley - D

1 that point. And I was, like I said, the drug task force
2 officer with the DEA. And the investigation was going towards
3 that -- the federal side of -- of things in the investigation.
4 And -- and it provided me information and kind of got me going
5 with them in the investigation.

6 Q. And did the WIN team ask for your assistance because of
7 your federal assignment?

8 A. Yes.

9 Q. Do you remember the day that you became involved?

10 A. It was the 30 -- sorry, the 29th.

11 Q. Okay. And did you apply for any search warrants in this
12 case?

13 A. Yes, I did.

14 Q. Tell us about that.

15 A. I applied for a search warrant on April 2nd to the address
16 of 11759 Southeast 64th Avenue in Milwaukie.

17 Q. Okay.

18 A. And also for a vehicle, a Honda Passport with license plate
19 827 David, Robert, King; DRK.

20 Q. And did you obtain judicial authorization for both that
21 location and the vehicle?

22 A. Yes, I did.

23 Q. What time did you get that search warrant signed?

24 A. It was signed at 4:25 p.m. on April 2nd.

25 Q. And in applying for that search warrant, did you provide

1 facts to a judge?

2 A. Yes, I did.

3 Q. I want to ask you about who -- so in laying out your facts,
4 did you identify someone that you believed lived at location 1?

5 A. Yes, we did.

6 Q. Who was that person that you believed lived at location 1?

7 A. Fabian Sandoval-Ramos.

8 Q. Did you take part in the execution at the house on 64th?

9 We've been calling it location 1.

10 A. Yes, I did.

11 Q. Okay. When you searched location, did you find Fabian
12 Sandoval-Ramos?

13 A. No, we did not.

14 Q. Okay. What time did you do the search warrant at location
15 1?

16 A. It was at 5:45 p.m.

17 Q. How long did it take?

18 A. Oh, probably -- you mean to secure the residence or to
19 complete the search?

20 Q. To complete the whole thing.

21 A. Probably at least three hours.

22 Q. Had anyone been arrested prior to your search warrant at
23 location 1?

24 A. Yes.

25 Q. Who?

Carley - D

1 A. Raul Arcila -- Arcila and Ramirez Coronel.

2 Q. Did you participate in interviewing either one of those
3 individuals?

4 A. Yes, I did.

5 Q. Which one?

6 A. Both, actually.

7 Q. Okay. Where did your interview take place?

8 A. At location 1.

9 Q. Prior to your interviews, did you advise Mr. Arcila of his
10 **Miranda** rights?

11 A. Yes, I did.

12 Q. And did you enter -- or advise the other people you
13 interviewed as well?

14 A. Yes, I did.

15 Q. Did you do so in English or in Spanish?

16 A. In both.

17 Q. Explain to us how that happened.

18 A. There was a Spanish translator there who also works for the
19 Washington County Sheriff's Office, Deputy Debon (phonetic)
20 Tate. And he assisted with the -- the reading of the search
21 warrant to all -- or to the people at the location and, to
22 everybody, **Miranda** rights.

23 Q. And when you say "read," was -- were the **Miranda** rights
24 read from something?

25 A. Yes, they were.

Carley - D

1 Q. What was that?

2 A. An issued -- an issued card that I received or have with
3 me.

4 Q. Do you have it today?

5 A. I do.

6 Q. And are the rights on that card, are they in English or in
7 Spanish?

8 A. They're in both.

9 Q. Okay. And were both versions read to Mr. Arcila and
10 Mr. Ramirez Coronel?

11 A. Yes, they were.

12 Q. In summary, did you advise these individuals that they did
13 not need to speak with you?

14 A. Yes, I did.

15 Q. That they had the right to stay silent?

16 A. Yes, ma'am.

17 Q. And did you advise them that anything they said could be
18 used against them in a court of law?

19 A. Yes, I did.

20 Q. Did these individuals acknowledge that they understood what
21 you had read to them?

22 A. Yes, they did.

23 Q. How did you get that acknowledgment? Was it everybody at
24 once or one at a time?

25 A. Individually asked each person, as they -- as they heard

Carley - D

1 them, if they understood each one. And you get an individual
2 answer from each person.

3 Q. You also mentioned reading the search warrant?

4 A. Yes, ma'am.

5 Q. What do you mean?

6 A. The -- the search warrant, in its entirety, is read to any
7 occupants found or arriving at the residence that you have a
8 signed search warrant for.

9 Q. And when you say "in its entirety," what is that document
10 that you would read to these people?

11 A. Basically explaining the authority, signed by the judge,
12 the location and/or the vehicle -- in this case, both -- and
13 their descriptions. And then basically the items that the
14 court is authorizing to be searched for.

15 Q. And did those items involve drug trafficking evidence?

16 A. Yes, they did.

17 Q. Let's move to the interviews. Prior to conducting those
18 interviews, did you determine whether they needed to be in
19 English or in Spanish?

20 A. Yes, I did.

21 Q. How did you make that determination?

22 A. Well, I -- I asked individually all of them if -- if they
23 understood English well or spoke English well. And it was kind
24 of -- you kind of get a sense for if you even just speak a
25 normal sentence whether or not somebody's understanding or

Carley - D

1 comprehending the question you just asked. And I made sure
2 that I got specific answers from all three, stating whether or
3 not they understood English well.

4 Q. Who was the third person?

5 A. It was Coronel-Morga.

6 Q. Was that Mario Coronel-Morga?

7 A. Yes, ma'am.

8 Q. And so who, if anyone, was interviewed in English?

9 A. Mr. Arcila and Coronel-Morga.

10 Q. And did Mr. Arcila -- how do you know he spoke English?

11 A. He answered in English when I asked him if he understood --
12 well, when I asked him if he understood his rights and when I
13 asked him if he understood English or spoke English well; well
14 enough for us to continue talking, he answered in English and
15 in the affirmative.

16 Q. Okay. And did you have your entire conversation with him
17 in English?

18 A. Yes, I did.

19 Q. Did you have a Spanish translator available and nearby in
20 case he needed it?

21 A. Yes, we did.

22 Q. And did he need any translation?

23 A. No, he did not.

24 Q. What about Mr. Ramirez Coronel?

25 A. Mr. Ramirez Coronel did need a Spanish translator.

Carley - D

1 Q. Did Mr. Ramirez Coronel speak any English with you?

2 A. Not that I recall.

3 Q. And what about Mario Coronel-Morga?

4 A. Coronel-Morga did not need a Spanish interpreter.

5 Q. So he spoke English?

6 A. Yes, very well.

7 Q. Okay. So tell us about the interviews.

8 Were they all at once or one at a time?

9 A. Individually.

10 Q. Who went first?

11 A. I first talked to Ramirez Coronel.

12 Q. Second?

13 A. Mr. Arcila.

14 Q. Third?

15 A. Coronel-Morga.

16 Q. Where did you conduct those interviews?

17 A. In the garage of location 1.

18 Q. And so what I want you -- we're not going to talk about the
19 interviews of Mr. Ramirez Coronel or Mr. Coronel-Morga. I want
20 to focus on the interview you had with Mr. Arcila. Okay?

21 A. Okay.

22 Q. So set the scene for us. You said you're in the garage.

23 Who else is there? What's the atmosphere?

24 A. The garage -- the roll-up garage door's open. There's a
25 man door, leading into the -- into the garage.

Carley - D

1 Periodically there would be an investigator or a
2 searcher who would walk through the garage. But basically it
3 was myself, Detective Andersen conducting the interview with --
4 with Mr. Arcila.

5 Q. Were you the only two law enforcement agents in the garage
6 at the time?

7 A. Yes, we were, other than just a -- a walk through,
8 basically, into the -- into the man door, through the search of
9 the house.

10 Q. And what was the tone of your discussion like with
11 Mr. Arcila?

12 A. He seemed calm. Didn't -- didn't seem to be amped up, or
13 anything like that.

14 Q. Did he seem confused at any time?

15 A. No, he did not.

16 Q. How did your interview start?

17 A. I just started with a basic question, how long he had lived
18 at the residence. And he stated that he had been at the
19 residence approximately three to four months.

20 And I asked him -- I asked him about -- and then I
21 just jumped into asking him about the green Honda Civic and
22 the -- where they were headed, and the traffic stop and --

23 Q. At your interview, did you know that he had been in that
24 green Civic?

25 A. Yes, I did.

Carley - D

1 Q. Okay. And before you interviewed him, were you made aware
2 of what was found in the green Civic?

3 A. Yes, I was.

4 Q. What was that?

5 A. The heroin.

6 Q. And so you said you wanted to just confront him with this?

7 A. Correct.

8 Q. Okay. Tell us about that.

9 A. Well, we had information, you know, leading up to -- where
10 we knew what he was doing, what they were doing, where they
11 were going in that car. And I wanted to kind of see, you know,
12 what his answer was going to be right off the bat and see how
13 truthful he was going to be about what they were -- what they
14 were out doing.

15 Q. Okay. And did he have an explanation for what they were
16 out doing?

17 A. He said that they were going to the Home Depot to buy -- to
18 get some things.

19 He really had a pretty vague explanation as to what
20 they were doing; he and Ramirez Coronel.

21 And I again confronted him about what was found in
22 the vehicle and the information that I had; where we knew why
23 they had left and where they were going to the predetermined
24 location.

25 Q. At the time you interviewed Mr. Arcila, had you already

Carley - D

1 completed your interview of Mr. Placido Ramirez-Coronel?

2 A. Yes.

3 Q. Okay. And the information that Mr. Arcila told you about
4 going to Home Depot, was that consistent or inconsistent with
5 what Mr. Placido Ramirez-Coronel told you, without going into
6 what he said?

7 A. It was inconsistent.

8 Q. Okay. And did -- what did you make of that?

9 A. Well, I -- he was being untruthful. Arcila was being
10 immediately untruthful during the -- during the interview.

11 Q. Okay. And were you aware of what surveillance vehicles had
12 observed about the green Civic, specifically? Did they see it
13 go to a Home Depot?

14 A. No, they did not.

15 Q. And did you confront Mr. Arcila with that fact?

16 A. Yes, I did.

17 Q. What did he say?

18 A. He denied being involved in any sort of illegal activity
19 after I confronted him about what we found and -- and that his
20 Home Depot story wasn't matching up. And -- and he basically
21 said that if -- if Ramirez -- Ramirez Coronel was conducting --
22 doing something illegal without him knowing about it, that that
23 was -- basically wasn't his problem, or he wasn't involved in
24 it.

25 Q. Okay. And is that possible?

Carley - D

1 A. It is.

2 MR. SEPP: Object.

3 THE COURT: He says it is possible.

4 Do you want -- do you want to --

5 MR. SEPP: No, no, no. Withdrawn.

6 THE COURT: Okay. Go ahead.

7 BY MS. BOLSTAD:

8 Q. So given that that was his story, his explanation to you,
9 which is possible, what explanation did you ask him next?

10 A. I asked him if -- if he -- if his fingerprints would be
11 found on the packaging of the -- of the heroin packages that
12 were found in the hidden compartment in the vehicle.

13 Q. And what did he say to that?

14 A. He said, well, probably.

15 He said -- actually, I quoted it, Well, yeah,
16 probably.

17 Q. Did he provide any further information that you recall
18 about the fingerprint statement?

19 A. Well, after that, I asked him, Well, why would that -- why
20 would that be, if he wasn't involved in any of this activity?
21 And he says -- why would he -- why would that be found? And
22 then he kind of alluded to that, well, he touched the -- he
23 would have touched the packaging or the plastic while it was in
24 the kitchen. As, like, some sort of, you know, it was just in
25 the kitchen, so maybe he touched it type of a thing.

Carley - X

587

1 Q. And is he the one who brought up the kitchen?

2 A. Yes.

3 MS. BOLSTAD: Nothing further on direct, your Honor.

4 THE COURT: Mr. Andersen.

5 MR. ANDERSEN: Nothing further.

6 THE COURT: Thank you.

7 Mr. Sepp.

8 MR. SEPP: Thank you, your Honor.

9 CROSS-EXAMINATION

10 BY MR. SEPP:

11 Q. Now, did you write a report outlining or detailing your
12 interview of Mr. Arcila?

13 A. Yes, I did.

14 Q. Did you bring that with you?

15 A. Yes, I did.

16 Q. Could you turn to -- I think it is page 5 of 7 of your
17 report.

18 A. Yes.

19 Q. Okay. Could you point to where it says in here that
20 Mr. Arcila -- excuse me, that Mr. Arcila mentioned that it
21 was -- brought up the kitchen?

22 A. I did not -- that is not in my report.

23 Q. What's in your report is that he just mentioned the
24 fingerprints could be on the packaging. Correct?

25 A. Correct.

Carley - ReD

588

1 Q. And obviously, if he's lived there, he could have touched
2 the packaging?

3 A. Correct.

4 Q. How long did this -- best estimate, how long did the
5 interview last?

6 A. Maybe ten minutes.

7 Q. And everyone was just standing in the garage, or was there
8 a couch or something out there?

9 A. No, we were standing.

10 MR. SEPP: That's all. Thank you.

11 THE COURT: Redirect.

12 MS. BOLSTAD: Yes.

13 REDIRECT EXAMINATION

14 BY MS. BOLSTAD:

15 Q. Deputy Carley, who else was present, law enforcement-wise,
16 during your interview with Mr. Arcila?

17 A. Detective Andersen.

18 Q. Okay. And prior to your testimony today, did you have a
19 chance to review Detective Andersen's report of the interview?

20 A. Yes, I did.

21 Q. And in reading her report, did that trigger additional
22 memories on your part?

23 A. Yes, it did.

24 Q. Okay. Do you remember Mr. Arcila talking about the
25 cellophane in the kitchen, even though it's not in your report?

Blankenship - D

589

1 A. I do, yes.

2 MS. BOLSTAD: Nothing further on redirect.

3 THE COURT: All right. Thank you, sir. You may step
4 down.

5 THE WITNESS: Thank you, your Honor.

6 THE COURT: Next witness?

7 MS. BOLSTAD: The Government calls Josh Blankenship.

8 THE COURT: Please face the jury and the deputy
9 there.

10 Raise your right hand to be sworn.

11 (Witness sworn.)

12 THE WITNESS: I do.

13 THE CLERK: Please take a seat.

14 THE COURT: Bring yourself close in there. Thank
15 you.

16 Tell us your full name, and spell all of it.

17 THE WITNESS: Joshua Blankenship. J-O-S-H-U-A. Last
18 name is B-L-A-N-K-E-N-S-H-I-P.

19 THE COURT: Counsel.

20 MS. BOLSTAD: Thank you, your Honor.

21 DIRECT EXAMINATION

22 BY MS. BOLSTAD:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Could you please introduce yourself to the jury.

Blankenship - D

1 A. My name is Josh Blankenship. I'm a special agent with the
2 Drug Enforcement Administration here in Portland.

3 Q. How long have you been with the Drug Enforcement
4 Administration?

5 A. I've been a special agent since November of 2012.

6 Q. What kinds of cases have you worked on?

7 A. We've worked on mid- to high-level drug trafficking cases.

8 Q. Could you describe some of your training and background,
9 prior to -- or -- or in your role as a DEA agent?

10 A. It started with a 17-week basic training course down in
11 Quantico, Virginia. It was a full-time training. We did --
12 they covered hundreds of hours of instruction on surveillance,
13 report writing, testifying, confidential source handling,
14 interview and interrogation techniques, affidavit writing,
15 search warrant executions, tactical -- tactical situations,
16 covering them. And also covered money laundering. The
17 means -- pretty much all of the means drug traffickers use
18 to -- the whole supply chain of drugs; from the manufacturing,
19 all the way to the distribution of the end user. And then also
20 how the -- the drug traffickers will take the proceeds, try to
21 conceal them, and actually use them to launder, and pretty much
22 the whole scope of drug trafficking.

23 Q. Could you estimate how many investigations you've been
24 involved with?

25 A. I've been involved in excess of 30 investigations.

Blankenship - D

1 Q. Okay. And is a DEA investigation, on average, larger than
2 a simple traffic stop?

3 A. Yes.

4 Q. Tell the jury about that.

5 A. Our average DEA investigations can last well over a year
6 long. In average, they can be a year to two years long. They
7 usually can start out with information passed from local
8 agencies about narcotics trafficking. Once it reaches a
9 certain level, sometimes they will contact us, and we can bring
10 a lot more resources to the table to be able to further
11 investigation up the chains.

12 Our investigations generally lead us into ultimately
13 the drugs coming in out of Mexico and outside the jurisdiction
14 of the law -- local law enforcement.

15 Q. Okay. And have some of your investigations involved
16 heroin?

17 A. Yes.

18 Q. Are you familiar with Fabian Sandoval-Ramos?

19 A. Yes.

20 Q. Did you investigate him in 2014?

21 A. Yes.

22 Q. What was your role in the investigation?

23 A. My role in the investigation began when I was -- assisted
24 the search warrant at location 1. And then I actually was the
25 applicant in -- or the affiant for the search warrant for

1 location No. 2.

2 Q. And at the time you became involved, and the DEA, how many
3 different counties were involved in the case?

4 A. At least three different counties. It was Washington
5 County, Multnomah County, and Clackamas County.

6 Q. Okay. And what level in the chain of distribution was the
7 investigation at when you became involved?

8 A. We were up to the fourth level of the investigation.

9 Q. So you mentioned location 1. Who wrote that search
10 warrant?

11 A. TFO Tony Carley. Or Deputy Carley now.

12 Q. Okay. I want to talk about the context of the search
13 warrant execution.

14 Were you aware of what had happened prior to the
15 search warrant at location 1 that day?

16 A. Yes, I was.

17 Q. Okay. And tell the jury what you knew.

18 A. What I knew is that Washington County had been working up
19 the different levels of a **Len Bias** case. They had identified a
20 high-level heroin supplier and that they had conducted a
21 controlled purchase from this supplier. And then they
22 contacted Deputy Carley to assist with getting a search warrant
23 for the location of that supplier.

24 Q. I'm going to ask you some timing questions.

25 Do you know what time of day Mr. Baker made a call to

Blankenship - D

1 his source of supply to order the quantity of drugs?

2 A. Yes. It was between 3:45 and four o'clock in the afternoon
3 on April 2nd.

4 Q. And do you know what time the later phone calls between
5 Mr. Baker and the number for Mexican Bobby -- do you know what
6 time those later calls took place?

7 A. Yes. The call took place at about 4:50 in the evening.

8 Q. Where were you physically located when the Baker calls were
9 placed to order the drugs?

10 A. When Baker called to order the drugs initially, at about
11 3:45, I was actually in a church parking lot with other members
12 of the Washington County team, preparing to execute the search
13 warrant.

14 Q. And were you still in that parking lot when Mr. Baker let
15 Mexican Bobby know that he was here at the location?

16 A. No, I was not.

17 Q. Okay. At some point, while you were in that church parking
18 lot, did you observe any vehicles linked to this investigation?

19 A. Yes.

20 Q. Tell the jury about that.

21 A. While we were in the church parking lot, preparing, we
22 heard on the radio -- the surveillance radio, because everyone
23 had their radios on, that a green Honda Civic had departed
24 location No. 2.

25 And then just a minute or two later, while we were in

1 the parking lot, we saw a green Honda Civic drive by, and it
2 appeared to be heading towards L1.

3 Q. Did you see a Honda Civic?

4 A. Yes, I did.

5 Q. What color?

6 A. It was like a -- a teal greenish.

7 Q. Which direction was it going when you saw it?

8 A. South on 64th Street.

9 Q. And what direction was it going, location-wise, in this
10 case?

11 A. It was heading toward the direction of L1 and also towards
12 the 7-Eleven. Those are both in that general direction.

13 Q. Do you know what time -- do you know what time the green
14 Honda Civic arrived at or left the area of location 1?

15 A. Could I review my notes?

16 Q. Please do.

17 A. It was at approximately -- around five o'clock.

18 Q. Okay. Do you know if Mr. Baker received phone calls after
19 that green Honda Civic left the area of L1?

20 A. Yes.

21 Q. What was the nature of the calls Mr. Baker received after
22 the green Civic left location 1?

23 A. After -- it was -- the calls were made, basically telling
24 Mr. Baker, hey, follow the green Honda over to the Lowe's
25 parking lot.

1 Q. And did that happen?

2 A. No, that did not happen.

3 Q. Why not?

4 A. Because there's -- they executed a traffic stop and pulled
5 over the green Honda Civic.

6 Q. Okay. And do you know what time the traffic stop of the
7 Honda Civic took place?

8 A. The traffic stop, probably -- approximately around 5:20.
9 5:20, 5:25.

10 Q. Did you participate in that traffic stop or the search of
11 the vehicle?

12 A. No, I did not.

13 Q. Do you know what was seized?

14 A. Yes, I do.

15 Q. How do you know what was seized?

16 A. Because DEA processed the evidence that was seized.

17 Q. And were you part of that processing?

18 A. Yes, I was.

19 Q. I'm going to show you what's been marked and admitted as
20 Government Exhibit 61.

21 A. (Handed exhibit.)

22 Q. Do you recognize that?

23 A. Yes.

24 Q. What is it?

25 A. It is the wrappings of a -- that heroin was concealed in

Blankenship - D

1 the glove -- or the -- the trap inside the green Honda.

2 Q. And did that contain heroin?

3 A. Yes, it did.

4 Q. How much heroin?

5 A. Approximately 13 pieces.

6 Q. And did you submit those 13 pieces to the DEA laboratory?

7 A. Yes, I did.

8 Q. I'm going to show you what's marked and admitted as
9 Government's 62.

10 A. (Handed exhibit.)

11 Q. Do you recognize that?

12 A. Yes, I do.

13 Q. Is that what you're talking about?

14 A. Yes, it is.

15 Q. And on the screen in front of you, I'll pull up Government
16 63.

17 So when you sent those -- that item to the
18 laboratory, did the laboratory test the drugs?

19 A. Yes, it did.

20 Q. Okay. And did they send you the results of their testing?

21 A. Yes, they did.

22 Q. So looking at Government 63, does this look like something
23 you recognize?

24 A. Yes. That is our form to submit the drugs to the -- to the
25 drug laboratory.

Blankenship - D

597

1 Q. Okay. And I'm going to ask to move to page 3 of this
2 report.

3 Have you reviewed the results from the lab?

4 A. Yes.

5 Q. And how much was the gross weight of the material as
6 reflected in the lab report?

7 A. 393.9 grams.

8 Q. Okay. And would that gross weight include the packaging?

9 A. Yes.

10 Q. Okay. What was the net weight of the drugs after testing?

11 A. 323.5 grams, plus or minus .02 [sic] grams.

12 Q. And does that net weight include packaging?

13 A. No.

14 Q. I'm going to move on to the search of location 1.

15 Oh, actually, I'll go back to this.

16 So are you aware of how much Mr. Baker ordered?

17 A. Yes.

18 Q. How much?

19 A. 8 ounces.

20 Q. And it sounds like -- do you know how many grams 8 ounces
21 or eight pieces of heroin would be?

22 A. I'm horrible with math. But eight times 25. So about 200
23 grams.

24 Q. Okay. And it sounds like you seized more?

25 A. Yes.

Blankenship - D

598

1 Q. What is -- what is your explanation for that?

2 A. Well, the -- the heroin was packaged into two separate
3 burrito-type-shaped packages, and one was marked with 8 and one
4 was marked with 5.

5 Q. Had Mr. Baker ordered 5?

6 A. No.

7 Q. Let's talk about the search at L1, location 1.

8 Was that before or after the traffic stop?

9 A. That was after.

10 Q. And you said it was at 4 -- 5:45?

11 A. Yes.

12 Q. Could you summarize what agents found at location 1.

13 A. They found approximately about 13,230 dollars in U.S.
14 currency. They found drug packaging materials. They found,
15 like, vacuum seal bags. They found multiple digital scales.
16 And they found packages of lactose, which is a cutting agent,
17 used. And then cell phones, and a couple other items.

18 Q. And did you go inside location 1?

19 A. Yes, I did.

20 Q. I'm going to show you a few photographs and ask you to
21 describe to the jury what is pictured.

22 But before I do, did you make any observations about
23 the kitchen area of location 1?

24 A. It was very scarce. Like a lot of the cabinets were pretty
25 much empty. Like in -- at one point, you opened up a cabinet

1 and it was completely empty except for a digital scale sitting
2 in it. And it just seemed really -- there was not much -- not
3 many items in there at all.

4 Q. Let's pull up Government's 70.

5 What is shown here?

6 A. One of the kitchen cabinets.

7 Q. And what's in that cabinet?

8 A. You've got sealing materials for the vacuum sealers.

9 You've got just some Ziploc-type bags. You've got sugar. An
10 oil filter. And just some over-the-counter medications.

11 Q. Is there a silver item on the second shelf?

12 A. Yes, there is.

13 Q. Do you know what that is?

14 A. I believe that is duct tape.

15 Q. Okay. Is that used in drug packaging, in your training and
16 experience?

17 A. Yes, it is.

18 Q. Let's look at 71. What -- what is pictured here?

19 A. More vacuum-sealed packaging material, several rolls of it,
20 smaller bags.

21 Q. Government's 72.

22 A. A digital scale.

23 Q. Government's 73.

24 A. Another digital scale.

25 Q. That looks pretty small. Is that -- are you -- have you

Blankenship - D

600

1 ever seen a digital scale that size?

2 A. Yes, I have.

3 Q. And were both of those items seized by the DEA?

4 A. Yes, they were.

5 MS. BOLSTAD: Okay. And those would be Government's
6 74 and 75, for the jury.

7 BY MS. BOLSTAD:

8 Q. Let's look at Government's 76. What is that?

9 A. That is a vacuum-seal machine.

10 Q. And do you know what it is used for?

11 A. It could be -- have a wide array of uses. But mainly in
12 situations like this, we see that it is used to vacuum seal in
13 drugs, to try and conceal the smell.

14 Q. Okay. I'm going to show you Government Exhibit 77.

15 Do you recognize this picture?

16 A. Yes.

17 Q. What is pictured here?

18 A. You have an extremely large role of Costco-brand food wrap
19 and then also the packages of lactose and some open bags of raw
20 sugar.

21 MS. BOLSTAD: Could you pull up the next exhibit.

22 BY MS. BOLSTAD:

23 Q. What is that?

24 MS. BOLSTAD: Oh. (Pause, conferring.)

25 BY MS. BOLSTAD:

Blankenship - D

601

1 Q. Do you recognize what's in 78?

2 A. Yes.

3 Q. What is it?

4 A. It is a plastic bag that a bunch of drug packaging -- used
5 drug packaging materials were located.

6 Q. What area of the room was --

7 A. That was in the laundry room.

8 Q. And did you go into the laundry room?

9 A. Yes.

10 Q. I would like to show you Government 79.

11 Do you recognize that picture?

12 A. Yes, I do.

13 Q. What is it?

14 A. That is me holding out -- stretching out that -- the drug
15 packaging material that was inside that bag, located next to
16 the washer or dryer; whatever that was.

17 Q. Okay. So when -- when agents seized that bag, did it
18 contain many different bags within it?

19 A. Yes, it did.

20 Q. And did you, at a later date, separate those bags out?

21 A. Yes, I did.

22 Q. And in your separation process, did you even spread out the
23 cellophane?

24 A. Yes, I did.

25 Q. And is that what is pictured?

Blankenship - D

602

1 A. Yes, it is.

2 Q. Are those your hands?

3 A. Yes, they are.

4 Q. And what is the word that is seen on that packaging?

5 A. Puro.

6 Q. Do you speak Spanish?

7 A. No, I don't.

8 Q. Okay. I would like you to take a look at Government 80.

9 I'm spreading it out here in front of you. Can you see that?

10 A. Yes, I can.

11 Q. Okay. And is part of 80, is it that puro bag that you
12 spread out?

13 A. Yes, it is.

14 Q. Okay. What were the rest of those individual bags in
15 Government Exhibit 80?

16 A. Those are a bunch of vacuum-seal bags that appeared to have
17 been cut open.

18 Q. And did they -- why were they significant to you?

19 A. They're significant to us because they looked like they had
20 residue from heroin. Like they were used -- used to seal
21 heroin inside them.

22 Q. Okay. Did you count how many bags -- how many complete
23 used bags you had?

24 A. Yes.

25 Q. Do you know what that count was? I might not have it --

Blankenship - D

603

1 A. I believe it was six. It was six or more.

2 Q. Do you know the quantity of heroin that could fit in each
3 of those bags?

4 A. Easily a kilo.

5 Q. One kilo per bag?

6 A. Yes.

7 Q. Did you test any of these bags at the laboratory?

8 A. No, we did not.

9 Q. I mean for drugs?

10 A. No.

11 Q. Okay. Were those bags tested at the laboratory for
12 fingerprints?

13 A. Those bags, yes, they were.

14 Q. And did we get any results from that?

15 A. No, we did not.

16 Q. Did you have a chance to smell those bags?

17 A. Yes, I did.

18 Q. What did they smell like?

19 A. They had the same vinegary smell that's common to heroin.

20 Q. I want to talk about cash. When you summarized, you said
21 agents found, I think, approximately 13,000 dollars.

22 A. Yes.

23 Q. Where in the house was the money found?

24 A. It was found in two locations. It was found -- I believe
25 approximately 5,000 dollars of it, and change, was found in the

Blankenship - D

1 family room of the location. And then another, I believe,
2 8,000 dollars, approximately, was found in the back bedroom of
3 the residence.

4 Q. And drug records, did you seize drug records at this
5 location?

6 A. Yes, we did.

7 Q. Where in the house were the drug records?

8 A. The drug records were -- may I review my notes?

9 Q. Yes.

10 A. (Pause, referring.) They were located in the closet in the
11 back bedroom of the residence. The same bedroom that the
12 money -- or the U.S. currency was found.

13 Q. Okay. I'm sorry I missed that.

14 Did you say where the drug records were found?

15 A. They were found in the back bedroom, the same back bedroom
16 that the 8 -- the approximately 8,000 dollars in cash was
17 found.

18 MS. BOLSTAD: Okay. I would like to pull up
19 Government Exhibit 99. And could we go to page 4.

20 BY MS. BOLSTAD:

21 Q. This is marked and admitted as Government 99.

22 Do you see an entry in this record at the top left?

23 A. Yes.

24 Q. And what does it say?

25 A. It appears to say S -- like 1200 pure or -- yes, S 1200

1 pure, and then 15 to 13,500.

2 Q. Let's go to the top of page 6.

3 Do you see an entry at the upper left?

4 A. Yes.

5 Q. And what does it say?

6 A. It says "milio" and then "mil pelen."

7 Q. Not a Spanish speaker?

8 A. Not a Spanish speaker.

9 Q. Okay. Was this notebook, was it sent to the DEA lab for
10 fingerprint analysis?

11 A. Yes, it was.

12 Q. And I noticed earlier in the picture you had gloves on.

13 Did you have gloves on when searching location 1?

14 A. Yes, I did.

15 Q. And did the other agents searching the scene have gloves
16 on?

17 A. Yes, they did.

18 Q. Okay. While you were searching that house, did
19 Mr. Arcila -- was he able to go walk around the house while you
20 were searching?

21 A. No, he was not.

22 Q. Would he have been able to touch this notebook while agents
23 were searching?

24 A. No.

25 Q. Did you participate in the interviews at location 1?

1 A. No, I did not.

2 Q. Okay. Did you have a later role with location 2?

3 A. Yes, I did.

4 Q. Tell us about that.

5 A. My later role with location 2 is that I was -- actually
6 applied for the search warrant for location No. 2. And then I
7 also assisted in searching and collecting evidence at location
8 No. 2.

9 Q. Who was present when agents arrived at location 2? I mean,
10 by nonlaw enforcement, who was present?

11 A. Fabian Sandoval-Ramos. Imelda, I believe, his wife. And
12 another -- may I review my notes?

13 Q. Yes.

14 A. Okay. (Pause, referring.)

15 Q. I don't need exact names.

16 A. Okay. It was another older female, and then I believe two
17 younger females and some juveniles.

18 Q. Did you see any babies on the scene?

19 A. No, I did not.

20 Q. And do you know who the other adult female -- do you know
21 who she was? Not name-wise, but did she live there?

22 A. No, she didn't. She was a neighbor or a friend.

23 Q. And what time was your search warrant at location 2
24 executed?

25 A. I believe it was executed at around 9:30. 9:15, 9:30 in

Blankenship - D

607

1 the evening.

2 Q. Did agents find any drugs at location 2?

3 A. No, they did not.

4 Q. Any evidence of drug use?

5 A. No.

6 Q. What, if anything, was found at location 2?

7 A. At location 2, we found what we believe is drug records.

8 We found some cell phones. We found in the dumpster a lot of
9 packaging of the same lactose that was at L1. We found also a
10 broken cell phone in the dumpster as well. And then other
11 miscellaneous items belonging to Fabian -- that had the name
12 Fabian Sandoval-Ramos and his wife's name on it, too.

13 Q. Do you have your DEA exhibit log with you?

14 A. Yes, I do.

15 Q. Okay. I'm going to ask you about one of the cell phones,
16 the iPhone.

17 A. Yes.

18 Q. Did DEA seize an iPhone?

19 A. Yes, they did.

20 Q. Where or from whom did they seize that iPhone?

21 A. The iPhone was actually on the nightstand, located to the
22 right of -- the iPhone was located on the nightstand in the
23 master bedroom.

24 Q. Okay. Let me show you Government Exhibit 82. It's not up
25 with you, is it? 82?

Blankenship - D

608

1 A. No. (Handed exhibit.)

2 Q. And does this look like the iPhone that was seized?

3 A. Yes, it does.

4 Q. Did agents later examine that phone and download its
5 contents?

6 A. Yes.

7 Q. And we'll hear about that later.

8 Did you participate in the interviews at location 2?

9 A. No, I did not.

10 Q. Finally, Agent Blankenship, I would like to talk to you
11 about a vehicle.

12 Earlier, from Deputy Carley, we heard that the search
13 warrant for location 1 also included a vehicle.

14 A. Yes.

15 Q. What vehicle were agents authorized to search?

16 A. A '98 Honda passport.

17 Q. While you were executing search warrants at location 1 and
18 location 2, did anyone find that Honda Passport?

19 A. No, they did not.

20 Q. Was it found sometime later?

21 A. Yes. It was found the next morning, at like 1:30 in the
22 morning. Police found it actually located down in Happy
23 Valley, about 90th and Southeast Causey.

24 Q. And did they seize the vehicle?

25 A. Yes, they did.

Blankenship - X

609

1 Q. Did they search it?

2 A. Not on scene. They transported it to the Washington County
3 Sheriff's Office, and then it was later searched. The -- the
4 search warrant on it was executed out at the Washington County
5 Sheriff's Office.

6 Q. And who was the registered owner that have vehicle?

7 A. Fabian Sandoval-Ramos.

8 Q. And so when it was later searched, did agents find any
9 evidence of drug trafficking?

10 A. Yes. They found another trap compartment built into the
11 passenger-side airbag, where the passenger-side airbag should
12 be.

13 Q. And was it full of drugs or empty entirely?

14 A. Empty.

15 MS. BOLSTAD: Nothing further on direct.

16 THE COURT: Mr. Andersen.

17 MR. ANDERSEN: Thank you, your Honor.

18 CROSS-EXAMINATION

19 BY MR. ANDERSEN:

20 Q. Agent Blankenship, you mentioned you wrote an affidavit for
21 a search warrant for L2. Right?

22 A. Yes.

23 Q. Now, in that search warrant, you talked about the
24 surveillance that it was your understanding that had been going
25 on in the Honda Civic.

Blankenship - X

610

1 A. Yes.

2 Q. And in that, you wrote that the Honda Civic left from the
3 area of L2. There's nothing in -- so, I mean, your knowledge,
4 at that point, was not that they had left the actual building
5 or anything of that nature. It was that they had left -- it
6 had been in the area and was coming towards L1. Is that
7 accurate?

8 A. It had departed, I believe, the -- I would have to review
9 the actual affidavit. But I -- it was the -- right, the area
10 at L2. At the parking lot area, yeah.

11 Q. Area of L2. Okay.

12 Now, in this affidavit, also, you mention that you
13 had seized 30,000 dollars of currency at L1; but now you're
14 saying 13.

15 A. Yes.

16 Q. So what -- what happened to the 30,000?

17 A. Well, what that was is the DEA process of when we find
18 currency, U.S. currency, is that we take all of the seized
19 currency -- or all of the currency we're going to seize, we put
20 it into a bag. First we have to determine who it possibly
21 belongs to. So if there's multiple people there, we ask them,
22 Is any of this yours? Then we separate it out.

23 In this case nobody claimed ownership of it. So we
24 put it into one bag and then we seal it on site, and we have
25 somebody witness. And then when we take that currency, we then

Blankenship - X

1 take it over to a banking institution. That's where the bag is
2 opened up and then an official count is made and they convert
3 it into a check.

4 And at that time, just looking at the sheer amount of
5 cash, it looked like it could have been 30,000 dollars. But we
6 don't actually conduct an official count on scene.

7 Q. So you were just guessing when you said 30,000?

8 A. Yes, I was. It was an estimation.

9 Q. Now, in the search -- the search warrant on L2, were you
10 present for the entry into -- into that? Were you present
11 there when it was going on?

12 A. No, I was not.

13 Q. Okay. So what you just described is kind of your
14 understanding of what the search warrant at -- at L2, I'm
15 talking about, not L1?

16 A. Yeah, the search warrant at L2, I was actually meeting with
17 Ms. Bolstad at the time they actually made entry. I was
18 obtaining a copy of the search warrant, so that we could
19 actually read it to them.

20 And then right after they made entry and secured the
21 residence, that's when I came on scene.

22 Q. Okay. And did you see anybody -- people in custody, or
23 what did you see?

24 A. Yes. Everybody was in -- well, Mr. Sandoval-Ramos was in
25 custody; handcuffs, I believe. Then everyone else was already

Blankenship - X

1 in the living room, seated on the couches.

2 Q. And did -- did you involve yourself in any of the search of
3 that -- of L2? Or were you just there as observing? Or what
4 was your role in the search?

5 A. I assisted searching in certain areas. I was mainly
6 collecting the evidence and preparing my reports.

7 Q. Did you find any paystubs, or any -- anything like that?
8 Or what sort of documentary evidence did you find?

9 A. I found, I believe, insurance -- insurance documents.
10 There were some check -- a checkbook with Mr. Sandoval's name
11 and stuff on it. I do not -- I do not recall, but I don't
12 believe if -- I don't believe we found any paystubs.

13 Q. Okay. You don't have any recollection, either way?

14 A. I don't.

15 Q. But, I mean, from your -- appearances, it did look to be
16 just a normal house, with normal things that you would expect
17 to find in a normal house. Right?

18 A. Yes.

19 Q. Was it a big house? Was it a small house?

20 It was an apartment, right?

21 A. It was kind of like a duplex, where you had a -- a
22 downstairs living room with a kitchen on the back. And then
23 you go upstairs, and then you have two bedrooms and a bathroom.

24 Q. So would you characterize that as a small apartment?

25 A. Well --

Blankenship - X

613

1 Q. It's not a studio, obviously?

2 A. It's not a studio, but it's a larger apartment.

3 Q. Okay. It's got two bedrooms, you said?

4 A. Yes.

5 Q. And there were three children living there and two adults,
6 as far as you could tell?

7 A. I believe so.

8 MR. ANDERSEN: I think that's all. Thank you.

9 THE COURT: Counsel?

10 MR. SEPP: Thank you, your Honor.

11 CROSS-EXAMINATION

12 BY MR. SEPP:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. Can I direct your attention to Government's Exhibit 79.

16 Oop, 78. My bad.

17 Okay. This is the -- what appears to be shopping
18 bag --

19 A. Yes.

20 Q. -- on the outside --

21 Okay. Was the shopping bag sent for prints at all?

22 A. No.

23 Q. And it looks like it's wedged in there pretty good.

24 A. From my recollection, it was just kind of dropped down
25 there next to it.

Blankenship - X

614

1 Q. Okay. But it was completely -- all of the -- those
2 exhibits lined up there, the -- the -- the kilo bags you
3 described them as, they were completely inside the -- the
4 plastic shopping bag?

5 A. Yes.

6 Q. Okay. And then if I could get your -- I believe you had it
7 up there, Exhibit No. 74. Or did she take it back? It's a
8 scale.

9 A. No, I do not have that up here.

10 Q. Okay. Well, do you remember which one it is?

11 A. I don't know off the top of my head.

12 Q. Okay.

13 MR. SEPP: It's the two scales. The little one and
14 the big one.

15 BY MR. SEPP:

16 Q. These two here (indicating)?

17 A. (Handed exhibit.) Yes.

18 Q. Was 74 --

19 MR. SEPP: I'll leave these up here, and go back to
20 the microphone.

21 THE WITNESS: Okay.

22 BY MR. SEPP:

23 Q. Were any prints recovered from 74, Exhibit 74?

24 A. I do not recall, off the top my head.

25 Q. Okay.

Blankenship - X

1 A. I don't have the fingerprint report in front of me, either.

2 Q. Okay. What about -- do you recall whether any fingerprints
3 were recovered from 76, the larger scale?

4 A. I do not recall, off the top of my head.

5 Q. Do you recall whether fingerprints were recovered from
6 anything other than the black notebook?

7 A. Not a hundred percent, but I don't believe so.

8 Q. Do you know whether any of the stretch-lite [sic] was sent
9 for fingerprinting?

10 A. Stretch --

11 Q. Okay. So the -- it's No. 70 -- item -- or Exhibit 78, it's
12 the Costco stretch-lite [sic] cellophane.

13 A. Oh, the -- the one that was wrapped up inside that bag?

14 Q. No, no, no. It's -- if you could just look at number --
15 it says 78, but I don't think that's right. I have it in here
16 as 78 -- or, sorry, my bad. I'm -- 77.

17 A. No, that was not.

18 Q. Were any of the packaging -- package -- alleged drug
19 packaging items sent for fingerprinting?

20 A. Just the ones in that bag that was located next to the --
21 in the laundry room.

22 Q. And you said the -- the Mead notebook with the drug
23 records --

24 A. Yes.

25 Q. -- that was found in the back bedroom?

Blankenship - ReD

616

1 A. Yes.

2 Q. Is that also -- did you go into that bedroom?

3 A. Yes, I did.

4 Q. Is that the one with the attached bathroom?

5 A. I believe so. Yes.

6 Q. (Pause, referring.) Did you -- were you the one who
7 recovered any of the personal identification of Mr. Raul
8 Arcila.

9 A. Could I refer to my notes?

10 Q. Yes, yes, yes. Yes.

11 A. No, I was not.

12 MR. SEPP: Okay. Thank you.

13 THE COURT: Redirect.

14 MS. BOLSTAD: Your Honor, permission to reopen as to
15 one evidentiary item, 109.

16 THE COURT: Go ahead.

17 REDIRECT EXAMINATION

18 BY MS. BOLSTAD:

19 Q. Agent Blankenship, I made a mistake earlier. I handed you
20 the wrong phone.

21 A. Oh.

22 Q. Could you look at your DEA drug record -- evidence records
23 of seized items for N5.

24 A. Yes.

25 Q. Do you see that entry?

Blankenship - ReX

617

1 A. Yes.

2 Q. And at location 2?

3 A. Yes.

4 Q. What was N5, the item that you logged in evidence?

5 A. It is described as an iPhone brand cellular phone on the
6 nightstand.

7 Q. Earlier, I handed you 82.

8 I would like to actually show you Government's 109.

9 A. (Handed exhibits.) Yes.

10 Q. Do you recognize 109?

11 A. Yes, I do.

12 Q. Why do you recognize 109?

13 A. 'Cause that is the iPhone located at location No. 2.

14 Q. And is it marked as N5 in the DEA bag?

15 A. Yes, it is.

16 MS. BOLSTAD: Government moves to offer 109.

17 THE COURT: Any objection?

18 MR. ANDERSEN: No. Thank you.

19 MR. SEPP: No.

20 THE COURT: All right. It's received.

21 MS. BOLSTAD: Nothing further on direct or redirect.

22 THE COURT: And on the reopened direct, any other
23 cross as to this piece?

24 RECROSS-EXAMINATION

25 BY MR. ANDERSEN:

Blankenship - ReX

618

1 Q. Just for clarification, did you previously identify 82 as
2 the cell phone that you had seized at L2?

3 A. Yes, I did

4 Q. But that was wrong?

5 A. Yes, that was wrong.

6 Q. Okay. Thank you.

7 THE COURT: Anything else, Mr. Sepp?

8 MR. SEPP: No, nothing.

9 THE COURT: All right. Sir, thank you. You may step
10 down.

11 Ms. Boyer, would you assist in collecting the
12 exhibits from the witness stand.

13 Next witness, please.

14 MS. BOLSTAD: The Government calls Dan Riley.

15 THE COURT: All right. Agent Riley, please come
16 here, all the way to the witness chair.

17 Face the jury and the deputy there. Raise your right
18 hand to be sworn.

19 (Witness sworn.)

20 THE WITNESS: Yes.

21 THE CLERK: Please take a seat.

22 THE COURT: Bring yourself close in, all the way in
23 to the microphone.

24 Tell us your full name and spell all of it, please.

25 THE WITNESS: Daniel Riley. D-A-N-I-E-L. R-I-L-E-Y.

Riley - D

619

1 THE COURT: Thank you.

2 Counsel.

3 DIRECT EXAMINATION

4 BY MS. GOLOBORODKO:

5 Q. Could you please tell the Court how you're employed.

6 A. I'm currently employed as a special agent with the Drug
7 Enforcement Administration.

8 Q. And how long have you worked for the DEA?

9 A. A little over five years now.

10 Q. And did you have any prior law -- law enforcement
11 experience before that?

12 A. No.

13 Q. During your time with the DEA, can you tell us about your
14 duties and area of investigation?

15 A. As a special agent, I have investigated narcotics
16 investigations; the full range. I've investigated street-level
17 crimes, as well as international, complex smuggling
18 conspiracies between South America and the United States.

19 Q. Now, you mentioned South America.

20 Do you have any experience outside of the United
21 States?

22 A. Yes, I do.

23 Q. Where?

24 A. Well, I started my career in Puerto Rico. I worked there
25 for three years. And then, during that time, I worked cases

Riley - D

1 that touched into the Dominican Republic, Colombia, and other
2 South American spots. And through the Caribbean as well.

3 Q. What kind of cases?

4 A. The full range. I've worked smuggling through boats.
5 Cocaine cases, primarily, when I was in Puerto Rico.

6 In Portland, I've worked interstate drug trafficking
7 cases to deal primarily with meth and also some heroin as well.

8 Q. Now, as a narcotics investigator, can you describe your
9 training -- training and experience in investigating these
10 types of narcotics cases?

11 A. Yes. At the beginning of my career, I spent 20 weeks in
12 the DEA academy, where I was trained on all aspects of
13 narcotics investigations, to include legal education; affidavit
14 and report writing; interviewing techniques; arrest techniques.
15 Pretty much everything that was needed. Firearms, as well,
16 to -- to be an agent.

17 Q. And can you estimate how many narcotics investigations
18 you've been involved in over the course of your career?

19 A. In excess of 50 separate investigations.

20 Q. And, on average, how many suspects were involved in the
21 average investigation?

22 A. That -- that could vary quite a bit. If it was a
23 street-level case, public housing, sometimes there were well
24 over a hundred defendants or suspects. There could be, on
25 average, I would say between 10 to 15. Some as small as one,

Riley - D

1 and others were quite a bit larger.

2 Q. And have you participated in wiretaps on drug trafficking?

3 A. Yes, I have.

4 Q. In just English or in another language?

5 A. English and Spanish.

6 Q. Are you fluent in Spanish?

7 A. Yes, I am.

8 Q. Now, how familiar are you with common code words for heroin
9 and methamphetamine?

10 A. I am very familiar.

11 Q. Common street -- what is the common street slang for
12 heroin?

13 A. A lot of different words have been used. Specifically,
14 you'll -- you'll often hear some sort of reference to black
15 because the heroin here is black in color. Such as tires. Or
16 it will even just be called black. Another term that's often
17 used is anything of feminine nature, such as the word "woman."
18 Or in Spanish they'll use -- in Spanish there's feminine and
19 masculine versions of words. And they'll use the feminine
20 version of a word as to refer to heroin. Because the word for
21 heroin in Spanish is feminine, so --

22 Q. What is that word?

23 A. "Heroína."

24 Q. Are there any other words that are used?

25 A. Words that I've seen, they've just been called

Riley - D

1 specifically, "mujeres," which means women; or "gorditas,"
2 which means, little fat women; and any sort of variation of
3 that.

4 Q. And what about meth?

5 A. For meth, I've seen words such as "crystal," "glass." And
6 then they'll also just say words like "clear." "Cake" is
7 another one that I've seen. Just -- just variations on those.

8 Q. And you mentioned earlier that you're fluent in Spanish.

9 How long have you been speaking Spanish?

10 A. I -- I first learned Spanish when I was 19. I spent two
11 months in an intensive language school. Afterwards, I spent 22
12 months in Chile, where I spoke the language about -- about 90
13 percent of the time. Subsequently, I took advanced college
14 courses in Spanish, and then I spent three years in Puerto Rico
15 for this job, where I spoke Spanish, interviewing suspects,
16 witnesses. Use the language quite regularly.

17 Q. Now, do you recognize the Spanish word for "vidrio"?

18 A. Yes, I do.

19 Q. What is it?

20 A. It means glass.

21 THE COURT: Excuse me. Can you spell that word,
22 please, for the --

23 MS. GOLOBORODKO: Yes. V-I-D-R-I-O.

24 THE COURT: Thank you.

25 BY MS. GOLOBORODKO:

Riley - D

623

1 Q. And you just said that glass is slang for meth. Correct?

2 A. Yes.

3 Q. Now, what about the Spanish word "puro"? What does that
4 mean?

5 A. That means.

6 THE COURT: Spell it, please.

7 BY MS. GOLOBORODKO:

8 Q. P-U-R-O

9 A. That means pure.

10 Q. Okay. Now, what about the Spanish word, "pelon," spelled
11 P-E-L-O-N?

12 A. That means bald.

13 Q. And are these slangs for any -- anything else?

14 A. Well, "vidrio" could be as it means, "glass." It's another
15 word for methamphetamine, which is crystal; and crystal shards
16 is the common description for methamphetamine. The form that
17 it takes is clear, and you can see through it.

18 I'm sorry, what was the --

19 Q. "Puro" and "pelon."

20 A. Well, in the -- sorry. What was the rest of the question?

21 Q. Are they slang for anything?

22 A. "Puro," I haven't used as a slang term itself. Just in a
23 description for --

24 Q. What does it mean?

25 A. It means "pure."

Riley - D

1 Q. Okay. And then what about "pelon"?

2 A. That's -- that's a nickname that they give to bald guys.
3 If you're bald, they might call you pelon.

4 Q. And have -- have you had the opportunity to speak to
5 suspects involved in drug dealing?

6 A. Yes, I have.

7 Q. Drug customers as well? I'm sorry, users and customers?

8 A. Yes.

9 Q. Now, so we're going to talk about this investigation.

10 Now, are you familiar with Fabian Sandoval-Ramos?

11 A. Yes, I am.

12 Q. Okay. Were you involved in an investigation of
13 Mr. Sandoval-Ramos and his co-conspirators in early April 2014?

14 A. Yes, I was.

15 Q. And what was your role?

16 A. I assisted in the investigation that was going on at the
17 time. Specifically, I assisted in processing evidence that was
18 seized at a house after search warrant. I translated for
19 interviews of Mr. Sandoval-Ramos and his wife. And -- and then
20 I later on reviewed text messages and -- of cell phones that
21 were seized as part of this investigation, and I submitted
22 evidence for further analysis to our laboratory.

23 Q. Now, the search of location 1, did you seize anything?

24 A. Yes, I processed the evidence that I seized at that
25 location.

1 Q. And what did you seize?

2 A. Specifically, I seized some wrappings that were consistent
3 with drug wrappings and some plastic that was consistent with
4 drug wrappings.

5 Q. Those drug wrappings (pointing)?

6 A. Yes, those drug wrappings.

7 Q. It's Government Exhibit 80, for the record.

8 Now, you mentioned that you also participated in
9 interviews.

10 A. Yes.

11 Q. So which interviews did you assist in with the
12 Spanish-language interpreting?

13 A. I assisted with Mr. Sandoval-Ramos and his wife, Imelda. I
14 can't -- I'm sorry. I can't remember her last name right now.

15 Q. Now, I'm not going to ask you about Ms. Sanchez-Olivera's
16 statements, or anything like that.

17 THE COURT: Slow down, please, Counsel, and speak up.
18 BY MS. GOLOBORODKO:

19 Q. Sorry. I'm not going to ask you about
20 Ms. Sanchez-Olivera's statements.

21 I just want to focus on Mr. Sandoval-Ramos.

22 A. Okay.

23 Q. So where did the interview take place?

24 A. We interviewed Mr. Sandoval out in front of his residence
25 on King Street.

Riley - D

1 Q. You say "we." Who -- who was there?

2 A. Myself, Detective Hegland, and Detective McNair.

3 Q. Hegland?

4 A. Andersen.

5 Q. I guess formerly Hegland, now Andersen?

6 A. Correct.

7 Q. Now, in communicating with Mr. Sandoval-Ramos were you
8 speaking Spanish with him?

9 A. Yes, I was.

10 Q. And so how -- how would it work?

11 A. Basically, Detective Andersen or McNair would ask him
12 questions in English. If he didn't understand them, I would
13 clarify them for him in Spanish. He would respond in Spanish,
14 and then I would translate that into English.

15 Q. You say if he didn't understand?

16 A. Yes. He would understand some of the questions, or most of
17 them -- most -- most of the questions. But if he didn't
18 quite -- excuse me. He would understand most of it in English.
19 If he didn't or needed clarification, I would give that to him
20 in Spanish.

21 Q. And did you understand what he was saying?

22 A. Yes, I did.

23 Q. And so you -- you confirmed that if he didn't understand
24 English, you would make sure he understood in Spanish?

25 A. Right, that he understood the questions, yes.

Riley - D

1 Q. All right. Now, what did he say during that interview?

2 A. He was basically asked about his involvement in drug
3 trafficking. He denied involvement in drug trafficking during
4 that interview. He was also questioned about a cell phone that
5 had been recovered that was broken, and he -- he admitted that
6 the phone was his and was broken but he couldn't explain how it
7 was broken or why it was broken. Also admitted that he had
8 recently thrown it away into the garbage. He was also
9 questioned further about a can of -- a white powder substance.
10 I can't remember the name of it right now. But -- and about
11 why he had told his wife to throw it --

12 MR. ANDERSEN: Your Honor, I object. I think he's
13 talking about hearsay evidence. We've already talked about
14 this.

15 THE COURT: Well, no. He's talking about why your
16 client made a statement, according to this witness; not what
17 she said. He's talking about a statement he made to his wife,
18 not --

19 MR. ANDERSEN: No, I -- I understand the Court's
20 ruling.

21 THE COURT: The issue we talked about were statements
22 by his wife. Those are excluded. Statements he made to the
23 witness are not excluded. They are statements of a party
24 opponent.

25 But let's get back to what the question is, and so

Riley - D

628

1 the witness can be focused specifically, without giving a
2 narrative.

3 THE WITNESS: So --

4 THE COURT: Wait for a question, please.

5 THE WITNESS: Okay.

6 BY MS. GOLOBORODKO:

7 Q. So you mentioned that he -- there was -- he denied any use
8 of some powdery substance.

9 Did he talk about that powdery substance, or the
10 lactose?

11 A. Yes. The -- he was questioned about that. And -- and he
12 stated to us that he had told his wife to throw it away but had
13 not -- did not have an explanation for why he told her to throw
14 it away.

15 Q. Okay. So now did you play a role after April 2nd in
16 submitting evidence to the DEA lab?

17 A. Yes, I did. I submitted several exhibits to the laboratory
18 for fingerprint analysis.

19 Q. Okay. What -- what did you submit?

20 A. They were drug ledgers that are -- suspected drug ledgers
21 that were -- were found at the residences. We wanted to see if
22 they contained fingerprints on them.

23 Q. Anything else?

24 A. Yes, but I don't remember what it was. I apologize.

25 Q. Was there any packaging material?

Riley - D

1 A. Yes. The packaging material was submitted as well.

2 Q. Now, finally, with your Spanish-language skills, was your
3 assistance needed when looking at text messages that were in
4 the seized cell phones, that were in Spanish?

5 A. Yes.

6 Q. And did you examine the phone that was found in the
7 dumpster, the broken one?

8 A. Yes.

9 Q. And did you look at the cell phone that was seized from
10 Raul Arcila at the traffic stop?

11 A. Yes.

12 Q. I'm going to bring it up and show you that phone.

13 (Witness handed exhibit.)

14 THE COURT: Wait till you're back at your table to
15 ask your question, and you're near a microphone, please.

16 BY MS. GOLOBORODKO:

17 Q. Do you recognize that?

18 A. Yes.

19 Q. Is that the phone that you seized from Mr. Arcila?

20 A. Yes.

21 THE COURT: What's the exhibit number, please?

22 MS. GOLOBORODKO: 84.

23 THE COURT: Thank you. Go on.

24 BY MS. GOLOBORODKO:

25 Q. I have another exhibit that I would like to show you.

Riley - D

1 Actually, it's going to be Exhibit No. 98.

2 Now, do you recognize the messages in this exhibit?

3 A. Yes. These are messages that were pulled out of the phone.

4 Q. Okay. Can you translate them? Or had you already -- I'm
5 sorry. You already did translate them.

6 A. Yes. I reviewed the text messages and found these messages
7 in Spanish and subsequently translated them.

8 Q. Okay. And why did you alert the case agent about these
9 particular text messages?

10 A. I recognized in these conversations many words and phrases
11 that are consistent with drug trafficking language.

12 Q. Like what?

13 A. For example, in here -- for one thing, the conversation is
14 somewhat vague. For example, in this first message here it
15 says: "Well, that's a lot."

16 Not referring to anything specifically.

17 "And I don't have many people, but if you'll do me
18 for a half and" --

19 And then the message ends.

20 But terms like "a half," or "that's a lot" -- "half,"
21 I would believe it to be referring to a half a pound or a half
22 of an ounce or half a kilogram; some undetermined quantity.

23 Later on down here, he says, "But firm at 350."

24 That's pricing that I know to be consistent with drug
25 pricing.

Riley - D

1 And then the next slide over, which continues on in
2 the same conversation -- if we can have that one brought up.
3 This is -- this is a continuation of the conversation, this top
4 one. The message here, it says -- it says:

5 It's that we have to pay for pounds, bro, and it
6 won't be worth it selling halves at that price.

7 I'm only letting you have it like that. Crazy.

8 And so they're negotiating pricing. And he
9 specifically says "pounds," and then he's saying that they're
10 selling half -- half-pounds at that price, then -- then they're
11 just not going to be able to -- it's a negotiation for pricing,
12 is the way I understand it.

13 Q. And which phone is this from?

14 A. I believe this is from the Exhibit 84.

15 Q. Mr. Arcila's phone?

16 A. Yes.

17 Q. Okay. Now, finally, I want to show you another exhibit.
18 It's Exhibit 108. So this is DEA Exhibit N3.

19 A. Okay.

20 Q. And we heard earlier today, Detective Tim Miller seized
21 this item from Mr. Sandoval-Ramos's closet.

22 And if you would take a look at that.

23 A. Yes.

24 Q. And help me understand the three Spanish-language words on
25 the sheet.

1 On the top you have "gordita"?

2 A. Yes.

3 Q. And then you have "debo"?

4 A. Debo, yes. And that word means "I owe."

5 Q. Okay. Followed by "vidrio"?

6 A. Yes.

7 Q. Followed by "debo"?

8 A. Yes.

9 Q. So what does that mean?

10 A. Well, taken in the context of the whole page, there's
11 clearly some math being done. And from looking at this, I
12 believe that "gordita" is a reference to heroin. "Vidrio" is a
13 reference to methamphetamine. And the person doing the math
14 here is trying to figure out how much they owe for the drugs
15 that they've purchased and are distributing. And they
16 specifically -- or he or she specifically writes, "I owe," on
17 the bottom there of each one.

18 MS. GOLOBORODKO: Thank you. No further questions.

19 Mr. Andersen.

20 MR. ANDERSEN: If you would bring that right back up.

21 Thank you, your Honor.

22 CROSS-EXAMINATION

23 BY MR. ANDERSEN:

24 Q. Now, it looks to me like that says "gordito" at the top.

25 A. It could be either one.

Riley - X

1 Q. So you don't know what that says? Could be "gordito,"
2 "gordita"?

3 A. It could be either one, yes.

4 Q. Could "gordito" be a person? Just like "pelon" is for
5 "bald," "gordito" is for "fat"?

6 A. Yes, potentially.

7 Q. So you really don't know what that means? Is that what
8 you're saying? Right?

9 A. I don't know specifically what that meant, when that was
10 written down, no.

11 Q. Right. Okay. So it could be that whoever's writing this
12 thing, owes "gordito," a person, whatever, 3,000 dollars?

13 A. Yes.

14 Q. Whatever that is?

15 A. Yes.

16 Q. Okay. All right.

17 Let's move on to a couple other things. Thank you.

18 Now, in your experience in speaking with Hispanics or
19 Mexican people who are speaking Spanish, is it your experience
20 that a lot of times it's -- well, let me rephrase that.

21 Do you think that people can understand a language
22 generally easier than they might be able to speak it?

23 A. Yes.

24 Q. So like you could -- even if you -- well, especially -- I
25 mean, you described your situation. You lived in Chile for

Riley - X

1 almost two years, it sounds like.

2 A. Yes.

3 Q. And it was -- was that your experience? You could
4 understand it better than you could speak it, at least
5 initially?

6 A. Yes.

7 Q. And when you had -- when you participated in this interview
8 with Mr. Sandoval, where did you describe you were? You said
9 you were outside. Were you ever inside a -- a patrol car or a
10 car, or anything of that nature?

11 A. No. The interview took place primarily out in front of the
12 residence.

13 Q. Did you -- do you recall how many -- or did you participate
14 in the interviews of any of the other people that were there?
15 There was, like, two people. Right?

16 A. Mr. Sandoval's wife. And then I spoke with other people
17 that were there as well, that only spoke Spanish. The kids,
18 things like that. Or -- if they only spoke Spanish, I was just
19 there to help communicate whatever needed to be communicated.

20 Q. So was there an interview with any -- any of the children?

21 A. No. No. Just questions, like, "Are you okay?" things like
22 that.

23 Q. Do you remember who, if anybody, was in handcuffs
24 throughout that time?

25 A. At -- at that residence specifically?

Riley - X

635

1 Q. Right.

2 A. Just Mr. Ramos -- or, excuse me, Mr. Sandoval.

3 Q. Is that your distinct recollection, or are you just
4 assuming that?

5 A. No, he was handcuffed at one point. Sometimes he was not
6 handcuffed, as well.

7 MR. ANDERSEN: That's all. Thank you.

8 MR. SEPP: Thank you, your Honor.

9 CROSS-EXAMINATION

10 BY MR. SEPP:

11 Q. I just have one question for you.

12 Over here.

13 A. Yes.

14 Q. Did you have any indication of whether or not Mr. Arcila
15 typed these text messages or someone else used his phone and
16 typed those text messages?

17 A. I don't know that, no.

18 MR. SEPP: Okay. That's all I have. Thank you.

19 THE COURT: Redirect.

20 MS. GOLOBORODKO: Nothing further.

21 THE COURT: All right. Thank you, sir. You may step
22 down.

23 Your next witness.

24 MS. BOLSTAD: Your Honor, at this time the parties
25 need to confer about something before the next witness. I have

Riley - X

1 two remaining.

2 THE COURT: All right. We'll take a little early
3 recess, then, jurors.

4 Notes on the chair. We're making fine progress here.
5 I'll be able to give you a status report a bit later today.
6 We're doing as expected.

7 Please don't talk about the case. Please, please.

8 Leave your notes on the chair. We'll see you in
9 about 15 minutes.

10 Watch your step walking out the of room, please.

11 (Jurors exit, 2:35 p.m.)

12 THE COURT: All right. Is this a matter for the
13 record or private conferral?

14 MS. BOLSTAD: I think just conferral.

15 THE COURT: Okay. Go ahead and be seated, folks.

16 MS. BOLSTAD: We could do it after -- if you need to
17 address something --

18 THE COURT: I'm just sitting here patiently waiting.
19 Go ahead.

20 (Pause, counsel conferring.)

21 MS. BOLSTAD: And the parties are finished with my
22 conference.

23 THE COURT: Yes. I'm going to have some questions
24 for you in just a moment, please.

25 MR. ANDERSEN: Your Honor --

Riley - X

1 THE COURT: Just a minute, please.

2 MR. ANDERSEN: Sorry.

3 THE COURT: (Pause, referring.)

4 All right. What did you want to add before I have my
5 issues?

6 MS. BOLSTAD: Nothing, your Honor. The parties are
7 in agreement. We have a -- Mr. Andersen intends to offer an
8 exhibit for the defense through Detective Andersen, when she
9 testifies and I have no objection to that.

10 THE COURT: All right. What did you want to note,
11 Mr. Andersen?

12 MR. ANDERSEN: Your Honor, Mr. Sandoval has just
13 alerted me he does need to go to the bathroom at some point.

14 THE COURT: We'll take a break just as soon as we
15 cover a few matters. Just give me a few minutes.

16 MR. SEPP: No, I was just --

17 THE COURT: I want to take up with each of the
18 defendants the question whether they will or will not be
19 choosing to testify.

20 And we'll do that after they've had an opportunity
21 for their recess. But I don't want to move the jury in and out
22 of the room if we're getting close -- if we're getting close,
23 Ms. Bolstad, to your resting.

24 MS. BOLSTAD: It's all relative. But I have two
25 witnesses. I anticipate them taking at least one hour total,

1 perhaps more.

2 THE COURT: All right. Well, then I -- I do want to
3 have the conversation. I'll just take another recess when the
4 Government rests, subject to a later confirmation about receipt
5 of exhibits. I don't want to take the jury's time to do that.

6 I want to question, again, the premise, Ms. Bolstad,
7 you're making in this new instruction request on page 2.

8 I think what you're asking me to tell the jury is the
9 Government doesn't have to prove foreseeability in order to get
10 a conviction on Count 1.

11 MS. BOLSTAD: Correct.

12 THE COURT: But you're asking me to ask the jury to
13 find whether the Government, nevertheless, proved
14 foreseeability in a verdict form.

15 MS. BOLSTAD: In a special verdict question.

16 THE COURT: Okay. This is very confusing, the way
17 you've laid it out because it's -- the way you've laid it out
18 makes it sound like it doesn't have to be proved and yet it
19 does have to be proved. So I'm going to try to rephrase that.

20 MS. BOLSTAD: Thank you, your Honor.

21 THE COURT: All right. I wanted to clarify your
22 point.

23 Okay. Let's everyone here take ten minutes, and then
24 we'll be ready for the next witness. Who is? Solis?

25 MS. BOLSTAD: Sergio Solis, yes.

Riley - X

1 THE COURT: I'll be right back.

2 (Recess taken, 2:41 p.m.)

3 THE COURT: Thank you, everyone. Please be seated.

4 All right. Is the Government ready to proceed?

5 MS. BOLSTAD: Yes, your Honor. We -- our next
6 witness is Sergio Solis.

7 THE COURT: All right. Sir, are you Mr. Solis, Agent
8 Solis? Please come here to the witness chair.

9 We'll be bringing the jury in.

10 We'll all stand when the jury enters. When I ask
11 everyone to be seated, will you please stay standing.

12 THE WITNESS: Thank you.

13 THE COURT: And you'll be sworn.

14 (Pause.)

15 THE COURT: Please rise for the jury.

16 (Jurors enter, 2:58 p.m.)

17 THE COURT: Thank you.

18 Please be seated.

19 Ladies and gentlemen, the next Government witness is
20 Agent Solis, who is before you.

21 Would you face the jurors, please, and the deputy.
22 And raise right hand to be sworn.

23 (Witness sworn.)

24 THE WITNESS: Yes, I do.

25 THE CLERK: Please take a seat.

Solis - D

1 THE COURT: Bring yourself close in to the
2 microphone, please.

3 Tell us your full name, and spell it all.

4 THE WITNESS: My name is Sergio; middle name,
5 Alejandro; last name, Solis. And S-E-R-G-I-O, for the spelling
6 of the first name. S-O-L-I-S for the spelling of last name.

7 THE COURT: And the middle name?

8 THE WITNESS: Alejandro, A-L-E-J-A-N-D-R-O.

9 THE COURT: Thank you, sir.
10 Counsel.

11 DIRECT EXAMINATION

12 BY MS. BOLSTAD:

13 Q. Good afternoon.

14 A. Afternoon.

15 Q. Could you please introduce yourself to the jury.

16 A. Hi, my name is Sergio Solis.

17 Q. Where do you work?

18 A. I work for the Drug Enforcement Administration in
19 Pleasanton, California.

20 Q. And what is your job title?

21 A. I'm a fingerprint specialist with the western lab.

22 Q. How long have you held that position?

23 A. For a little over five years.

24 Q. Prior to 2010, did you have other law enforcement
25 positions?

Solis - D

1 A. Yes.

2 Q. Tell us about those.

3 A. Prior to the DEA, I used to work for the City of Concord as
4 a forensic specialist. I worked there for approximately 12
5 years. And prior to the City of Concord, I used to work with
6 the San Joaquin County Sheriff's Department. I worked there
7 for approximately seven years, and my primary duties were
8 evidence custodian.

9 Q. Did you -- did you receive any special training in order to
10 become a fingerprint specialist?

11 A. Yes.

12 Q. Tell us about that.

13 A. I attended a field evidence technician course in 1998. It
14 was an 80-hour course. And approximately 20 hours of that
15 course were dedicated to latent print examinations,
16 comparisons, and recovery of latent prints.

17 I also attended a 40-hour basic F.B.I. fingerprint
18 course in San Jose, California, of which it was also entitled
19 "The recovery, comparison, and identification of latent
20 prints."

21 I have taken additional training in the use of
22 digital imaging systems for the same purpose of documenting
23 latent prints and using digital imaging for comparison and
24 identification purposes.

25 Q. Do you go through an annual proficiency examination with

1 the DEA crime lab?

2 A. Yes, I do.

3 Q. What is a proficiency examination?

4 A. Once a year, an outside vendor -- known as Collaborative
5 Testing Services -- provides a -- a test, which is mainly
6 comparison of latent prints to known prints.

7 Q. What is the purpose of such a proficiency examination?

8 A. To test -- to -- to test one's ability. And to see -- it's
9 also used as a study, as well, for the -- I guess, the -- the
10 testing of how accurate an examiner can be in latent print
11 examinations.

12 Q. And how have you scored?

13 A. I have scored perfect scores.

14 Q. How many fingerprint examinations have you conducted in the
15 course of your law enforcement career?

16 A. I have compared hundreds of thousands of comparisons.

17 Q. And during your five years with the DEA, does the DEA
18 actually keep track of the numbers?

19 A. Yes.

20 Q. So what are those numbers?

21 A. My last recording -- I get these numbers during the
22 evaluations. And from my last evaluation, I've compared -- I'm
23 sorry. I've examined over 1500 exhibits and recovered over
24 14 -- I'm sorry. 1500 exhibits, 14,000 individual items, and
25 recovered a little over 3,000 latent prints.

Solis - D

1 Q. And so let's talk about items and exhibits. Is a single
2 notebook one exhibit?

3 A. Yes.

4 Q. And are -- is each page within that exhibit an item?

5 A. Oh, I'm -- I'm sorry. The -- that is incorrect.

6 Q. Please correct me.

7 A. An item could be a single notebook. But an exhibit is a
8 package that contains the individual items inside.

9 Q. Okay. Let's talk about your fingerprint analyses.

10 What is typically asked of you by agents in the
11 field? What are they asking you to do?

12 A. To attempt to recover latent prints from the -- an item.

13 Q. Okay. And so are those items sent to you from agents in
14 the field?

15 A. Yes.

16 Q. And how do you -- what process do you follow?

17 A. Once an item has been submitted for -- for processing, I
18 would obtain the item through our evidence custodian. First,
19 do a visual examination of that item for any possible visible
20 prints that may have been due to some kind of stain. It could
21 be -- it could be a bloodstain, it could be some kind of
22 visible contaminant leaving an impression.

23 I then would go to the next process, which that
24 depends on the texture of the item. If it's a plastic
25 material, I would use a process known as cyanoacrylate ester,

Solis - D

1 also known as Super Glue. And that would process that item,
2 and develop latent prints in a white residue manner.

3 After that, if necessary, I would use a dye stain
4 solution. I would apply a solution that is called rhodamine
5 6G, and then I visualize it under a laser. Under the laser,
6 stained latent prints with the Super Glue would then become
7 visible, and I would then photograph them and document them and
8 recover them for further comparison purposes.

9 Other items, such as paper items, require a different
10 technique. After a visual examine, I would then use a process
11 known as ninhydrin. Ninhydrin is a liquid solution which would
12 react to amino acids. And if any latent prints are present on
13 that item, it would develop in a purplish-reddish color, of
14 which would already become visible to the naked eye. Then I
15 would -- maybe with some additional lighting, I would then
16 photograph them and preserve them for future steps.

17 Q. Okay. And when agents send you items from the field for
18 analysis do they also provide you with suspect names and/or
19 standard print cards from those suspects?

20 A. Yes.

21 Q. Okay. I'm going to put up a demonstrative just for you and
22 not for the jury.

23 Could you identify what this item is?

24 A. This is what is known as a standard known fingerprint card.

25 Q. And just for the record, does this have anything to do with

1 this particular case?

2 A. No.

3 Q. Just an example of a fingerprint standard?

4 A. Yes.

5 MS. BOLSTAD: Okay. The Government would ask to
6 publish to the jury.

7 THE COURT: For illustration only. Go ahead.

8 BY MS. BOLSTAD:

9 Q. And so tell the jury what a fingerprint standard card --
10 what does it involve? How is it made? How deliberate is the
11 process?

12 A. To create a standard -- a fingerprint card, it's directly
13 obtained from a known individual, either through the process of
14 employment, applying for a background check -- I'm sorry, in
15 conducting a background check, or also during the booking
16 process in jail; a person's fingerprints are recorded on a
17 known fingerprint card. It could be either through ink or, now
18 with computers, through what's known as Livescan.

19 MS. BOLSTAD: And, your Honor, there appears to be a
20 problem with the jury monitors.

21 And perhaps the witness could just hold up the paper
22 copy.

23 THE COURT: Do you have it with you?

24 MS. BOLSTAD: Yes.

25 THE COURT: I meant the witness, but that's all

1 right.

2 Actually, Ms. Bolstad, you just walk in front of the
3 jury, please, demonstrating slowly so they can see.

4 (Ms. Bolstad complying.)

5 BY MS. BOLSTAD:

6 Q. So I would like to return to the idea of how deliberate is
7 the process when such a fingerprint standard is made.

8 A. It's a deliberate process, as I expressed before. It's
9 made from -- directly from a known subject.

10 Q. And in terms of the how it's made, what is actually done
11 with the fingers?

12 A. An attempt is made to recover as much ridge detail as
13 possible on the tips of the fingers. So the person conducting
14 the recording would roll a subject's fingerprints from one end
15 of the fingernail to the other end of the fingernail as best as
16 possible, trying to avoid smudges or smears.

17 Q. Contrast that to real life, where people leave fingerprints
18 on items. What is the difference?

19 A. Usually a print left on an item is made inadvertently. It
20 is usually through the handling of an item and usually not
21 the -- the whole part of the finger is usually not recorded.

22 Q. You've spoken of latent fingerprints, I believe.

23 A. Yes.

24 Q. What is a latent fingerprint?

25 A. "Latent" means hidden. So it's a hidden print to the naked

Solis - D

1 eye.

2 Q. And are there some surfaces that are more likely to have
3 fingerprints -- or retain fingerprints than other surfaces?

4 A. Yes.

5 Q. Tell us about what's better for retaining fingerprints.

6 A. Those items would include smooth, clean, and nonporous
7 surfaces.

8 Q. What's an example of a porous surface?

9 A. Cloth material.

10 Q. Okay. And in those cases where you are able to identify a
11 latent print from a piece of evidence, how do you go about
12 determining who made that fingerprint; who left it?

13 A. I'm sorry. Would you repeat the question.

14 Q. In -- in those cases where you're able to identify with
15 your eye, or through the process you described -- so where --
16 where you're able to find a fingerprint, how do you go about
17 determining what finger or person made that fingerprint?

18 A. First, I conduct anal -- an analysis of the recovered or
19 developed latent print. I determine how suitable it is for
20 identification purposes. I look for the quality of the ridge
21 detail and present minutiae, characteristics; and the quantity
22 of those characteristics.

23 I then would obtain known cards submitted from -- the
24 name submitted by the agent. And look for ridge formations
25 first on -- or patterns, and narrow it down to a particular

1 finger.

2 I then would look for characteristics found already
3 on the latent print that match -- that would match on that
4 known finger. So those characteristics need to match
5 relatively in the same place, in the same position.

6 Q. What percentage of items that get submitted to you for
7 testing -- what percentage of those items are you actually able
8 to develop fingerprints for analysis?

9 A. Currently, we're averaging about a -- a 20 percent recovery
10 rate.

11 Q. And so what does that mean? Does that mean 80 percent of
12 items don't have fingerprints?

13 A. No.

14 Q. Explain.

15 A. Fingerprints are very susceptible to destruction. They --
16 if you touch an item, that does not necessarily mean that
17 you'll leave an identifiable fingerprint. You will leave a
18 partial, which may be smudged or smeared. In the process of
19 collection from an agent, as it is placed into a packaging
20 material, it may also smudge or smear on an item. And that's
21 also through -- up until, you know, I obtain the item. Also, a
22 person would have to have enough either perspiration or some
23 kind of contaminant material to actually leave an impression on
24 the item.

25 So if a person has really dry hands or has some kind

Solis - D

1 of -- of powdery substance on their hands that will not leave
2 moisture on the surface, that may not record -- leave a
3 recordable latent print.

4 Q. What are some examples of contaminants that help create a
5 usable fingerprint?

6 A. As far as contaminant, it could mean, you know, the
7 hands -- you use it for many -- you touch your face. Some
8 people have oily skin and they -- they'll touch their
9 fingers -- rub their fingers on their face and leave the
10 contaminant on -- on the finger ridges. They touch their hair,
11 the hair contains amino acids, so they leave that contaminant.
12 Also during -- eating greasy foods, you know, some -- something
13 that you physically hold that may leave a contaminant item on
14 the surface.

15 Q. Okay. You've talked about surfaces. Have you been asked
16 to look at drug packaging materials before for fingerprint
17 evidence?

18 A. Yes.

19 Q. What kind of drug packaging materials have you looked at?

20 A. We receive a lot of plastic bags, such as Ziploc bags,
21 sandwich bags, heat-seal bags. And we also get items with --
22 with tape surfaces.

23 Q. Are plastic bags and drug packaging that you've described,
24 is that a good surface for obtaining identifiable prints?

25 A. It is a generally good surface, as it is smooth. And

Solis - D

650

1 unless it's contaminated by some other material, it should be
2 clean and nonporous.

3 Q. Okay. Let's talk about this case now.

4 Did you process and compare fingerprints from
5 evidence items that were seized in this investigation and
6 submitted to you?

7 A. Yes.

8 Q. What did the agents submit to you for analysis?

9 A. He submitted items of -- of -- plastic in nature and also
10 notebooks that contained paper sheets.

11 Q. Did you also analyze digital scales?

12 A. Yes, I did.

13 Q. Okay. When the agents submitted those items to you, did
14 they provide you with names of suspects and their fingerprint
15 card?

16 A. In this case, the names and identifiable numbers were
17 supplied.

18 Q. Okay. And were you able to obtain fingerprint standards
19 for those individuals?

20 A. Yes.

21 Q. Let's look at Government Exhibit No. 80. Actually, it's
22 physical --

23 (Pause, referring.)

24 (Witness handed exhibits.)

25 BY MS. BOLSTAD:

Solis - D

651

1 Q. And do you recognize these items?

2 A. (Pause, referring.) From these items, I recognize one of
3 these items.

4 Q. Okay. What was the DEA exhibit number?

5 A. N10.

6 Q. Okay. And from your reports, is N10 something that you
7 analyzed?

8 A. Yes.

9 Q. I see -- are there any handwritten notations on those
10 items?

11 A. Yes.

12 Q. Are those your notations?

13 A. Yes.

14 Q. Okay. So once you received this item from the field, what
15 did you do with it?

16 A. I conducted those exams I mentioned before. I first
17 conducted a visual exam for the presence of already visible
18 print impressions. It is of a plastic material, so I then
19 proceeded for the Super Glue method. And after the Super Glue
20 method, I proceeded with the rhodamine 6G dye stain and laser.

21 Q. And were you able to develop any fingerprints of value?

22 A. I did not.

23 Q. How about the scales?

24 You -- you mentioned that you received digital scales
25 from the field.

Solis - D

1 A. Yes.

2 Q. I'm going to show you Government 74 and 75. (Pause,
3 referring.)

4 Start with 75.

5 A. (Handed exhibit. Pause, referring.)

6 Q. Government's 74.

7 A. (Handed exhibit.)

8 Q. Do you recognize those items?

9 A. Yes, I do.

10 Q. Did you examine them for fingerprints?

11 A. Yes.

12 Q. Were you able to develop any fingerprints of value?

13 A. Yes.

14 Q. Let's talk about that.

15 What was -- what were you able to identify?

16 A. In exhibit -- labeled as N8 on one of the packages, a
17 latent print was suitable for identification but was not
18 identified.

19 A latent print from a smaller scale (indicating) was
20 developed, and that latent print was identified to one of the
21 subjects provided by the agent.

22 Q. Which subject?

23 A. I would have to refer to my report to give a clear name.

24 Q. Do you have your report with you?

25 A. Yes, I do.

Solis - D

653

1 Q. Please go ahead and review that, and let me know when
2 you're ready.

3 A. The latent print recovered in people's Exhibit 74 was
4 identified to Placido Ramirez-Coronel.

5 Q. Do you know which finger of Placido Ramirez-Coronel that
6 print was made from?

7 A. May I refer to my report?

8 Q. Please do.

9 A. It was identified to the right thumb of Placido
10 Ramirez-Coronel.

11 Q. Okay. Let's turn, now, to your processing of the DEA
12 Exhibit N6, which is Government's 99. It will come up on the
13 screen in front of you.

14 A. Okay.

15 Q. So you -- did you examine drug records or notebooks that
16 were sent to you in this case?

17 A. Yes.

18 (Pause, Ms. Bolstad conferring.)

19 MS. BOLSTAD: Sorry. I'm going to show you the
20 notebook.

21 (Witness handed exhibits.)

22 BY MS. BOLSTAD:

23 Q. Do you recognize Government Exhibit 99?

24 A. Yes.

25 Q. Okay. And is that what you examined?

Solis - D

654

1 A. Yes.

2 Q. Did you take photographs in your process of looking for
3 fingerprints?

4 A. Yes.

5 Q. Okay. (Pause, conferring.) I would like to show you what
6 has been not marked and admitted. So I'm just going to show
7 you jpeg 278.

8 And do you recognize this photograph?

9 A. Yes.

10 Q. Why do you recognize it?

11 A. It is the steno pad that I processed, and the label that I
12 placed next to it for identifiable purposes.

13 MS. BOLSTAD: Permission to publish to the jury.

14 THE COURT: Any objection?

15 MR. ANDERSEN: No objection.

16 MR. SEPP: (Shakes head.)

17 THE COURT: Yes, go ahead and publish.

18 BY MS. BOLSTAD:

19 Q. Between those two notebooks that are Government Exhibit 99,
20 how many fingerprints were you able to develop?

21 A. I believe there were approximately 13 fingerprints and
22 approximately three palm prints.

23 Q. I want to focus on just one notebook, the steno pad. Okay?

24 A. Yes.

25 Q. Did you examine the outside cover of this notebook, as well

Solis - D

655

1 as the inside cover?

2 A. Yes.

3 Q. Did you also go page-by-page through the notebook?

4 A. Yes.

5 Q. And of the fingerprints that you were able to develop from
6 this steno pad, did any have sufficient ridge detail for your
7 analysis?

8 A. Yes.

9 Q. How many had sufficient ridge detail?

10 A. I would have to refer to my report.

11 Q. Sorry. Go ahead.

12 MS. BOLSTAD: And while you're looking, any objection
13 to showing the jpegs during Mr. Solis's testimony? Just
14 publishing, not admitting?

15 MR. ANDERSEN: No.

16 MR. SEPP: (Shakes head.)

17 THE COURT: All right. Go ahead.

18 BY MS. BOLSTAD:

19 Q. How many were you able to develop?

20 A. From the steno pad --

21 Q. Yes.

22 A. -- there were eight fingerprints suitable for
23 identification, and there were two latent prints, one of which
24 was a palm print, and one which appears to be the joint of a
25 finger.

Solis - D

1 Q. Okay. I'm going to go through three different photos from
2 within that notebook with you, one by one. Okay?

3 And I'm going to start with your jpeg 280, which will
4 be published to the jury.

5 Do you recognize this photo?

6 A. Yes.

7 Q. What is it?

8 A. It is the inside of the main cover to the steno pad.

9 Q. And I see what appear to be two white marks. What are
10 those?

11 A. One is a -- a scale. And on top of the scale is the --
12 what we call a latent print depiction, which -- and the
13 laboratory number.

14 Q. So I'm zooming in on one of those stickers.

15 Is that next to a fingerprint?

16 A. Yes.

17 Q. Okay. And do you assign a label to each print that you're
18 able to develop?

19 A. Yes.

20 Q. And so going back to the total picture there, which numbers
21 did you assign to these two latent fingerprints?

22 MS. BOLSTAD: Maybe we should zoom back in.

23 THE WITNESS: One was N6, which is the exhibit
24 number. Point 1-1-A, which that means it's the first latent
25 print documented.

Solis - D

657

1 And then the other marking is N6.1-2-A, which is the
2 second latent print documented.

3 Q. Sticking with -- or not.

4 Let's go to 1.1 -- or 1-1.

5 And is it on the screen in front of you?

6 A. Yes.

7 THE COURT: Barely.

8 BY MS. BOLSTAD:

9 Q. Is this a good print for your purposes of analysis?

10 A. Yes.

11 Q. What makes it a good print?

12 A. What it has, it has what appears to be a pattern of a right
13 slope loop fingerprint. And there also appears to be some
14 visible ridge characteristics.

15 Q. And were you able to make a comparison of this latent print
16 to one of the known suspects presented to you?

17 A. Yes.

18 Q. And who were you able to make that comparison to?

19 A. May I refer to my report?

20 Q. Yes. And please do, throughout.

21 A. Thank you.

22 That latent print developed was identified to Placido
23 Ramirez-Coronel, and it was identified to the left index
24 finger.

25 Q. Okay. Let's look at the same cover page but print 1-2.

1 Were you able to identify this print to any of the
2 known suspects?

3 A. Yes.

4 Q. Which suspect?

5 A. This print was identified to Fabian Sandoval-Ramos, and it
6 was identified to the right index finger.

7 Q. Okay. I would like to go now to jpeg 281.

8 Do you recognize this photograph?

9 A. Yes.

10 Q. Which page in the notebook is it?

11 A. It appears to be the front page of the notebook.

12 Q. Okay. And I see approximately five stickers on this page.

13 Did you assign labels to the -- to certain areas of
14 the page?

15 A. Yes.

16 Q. And do those labels correspond to fingerprints?

17 A. Yes.

18 Q. Which numbers were assigned to these fingerprints?

19 A. N6.1-3-A through N6.1-7-A.

20 Q. And were you able to identify these prints to any of the
21 known suspects in this case?

22 A. Yes, with the exception of one latent print.

23 Q. Was that 1-5?

24 A. Yes.

25 Q. Okay. Let's leave that one out.

Solis - D

1 And could you tell the jury, one by one, which
2 suspect prints you were able to confirm.

3 A. From latent print marked N6.1-3-A, it was identified to
4 Placido Ramirez-Coronel.

5 Latent print N6.1-4-A was identified to Fabian
6 Sandoval-Ramos.

7 Latent print N6.1-6-A was identified to Fabian
8 Sandoval-Ramos.

9 And latent print N6.1-7-A was identified to Placido
10 Ramirez-Coronel.

11 Q. Let's move on to -- I want to focus on a particular
12 developed print from this page. Okay?

13 Let's look at Government Exhibit 116 regarding print
14 1-4.

15 Oh, and this is just for you, Mr. Solis.

16 Do you recognize Government Exhibit 115? I'm sorry,
17 116?

18 A. Yes, I do.

19 Q. What is this document?

20 A. It is a comparison chart of a latent print developed to a
21 known fingerprint to which it was identified to.

22 Q. What is shown on the left?

23 A. The latent print developed.

24 Q. And is that the one from the item of evidence?

25 A. Yes.

Solis - D

660

1 Q. And what is shown on the right?

2 A. The known fingerprint.

3 MS. BOLSTAD: The Government offers Exhibit 116.

4 MR. ANDERSEN: Your Honor, if I could ask one
5 question in aid of --

6 THE COURT: You may.

7 MR. ANDERSEN: Mr. Solis, are these your numbers that
8 you put on here? Those are your markings?

9 THE WITNESS: Yes.

10 MR. ANDERSEN: This is what you produced?

11 THE WITNESS: Yes.

12 MR. ANDERSEN: I have no objection.

13 THE COURT: Counsel?

14 MR. SEPP: I have no objection, your Honor.

15 THE COURT: Thank you. It is received, and may be
16 published.

17 BY MS. BOLSTAD:

18 Q. Did you -- let's talk about those numbers next to the
19 arrows. What do the arrows point to? What is significant
20 about these numbers?

21 A. These are pointing to characteristics in the latent print
22 and in the known print that matched to each other.

23 Q. Is there any particular area of focus in this exhibit that
24 we should look at?

25 A. Yes.

1 Q. Which part?

2 A. What appears to be the middle portion of the latent print
3 and the middle portion of the known print.

4 Q. And would you like us to zoom in, or would you like to just
5 describe that?

6 A. You may zoom in.

7 Q. Which part would you like zoomed? The latent side or the
8 known?

9 A. The latent would be fine.

10 Q. Okay. Okay. So what are some areas that are important to
11 you of that middle portion of the print?

12 A. Well, what I -- upon my analysis -- and I was marking the
13 ridge characteristics, as I described earlier, where there are
14 bifurcations of ridges. Basically one ridge which splits into
15 two, or ridge endings where the ridge appears to end abruptly.

16 If you look in the middle on the latent print, which
17 is the print on the left, there appears to be what -- a long
18 enclosure of -- of ridges basically making an elongated circle.
19 Right above it there appears to be a short ridge with a spur --
20 what appears to be a spur.

21 And below that, there appears to be another ridge
22 going down the middle of the enclosure. And it appears to
23 split into two. The enclosure appears to be split into two.
24 And then, again, there appears to be two bifurcations -- appear
25 to be next to each other. When I first looked at this print, I

1 referred to it as a tooth. That's the way it just kind of
2 appeared. And that was unique, and that was my starting point
3 for comparison purposes from the latent to the known.

4 Q. And are all of these unique points of comparison on the
5 latent being compared to a known fingerprint of Fabian
6 Sandoval-Ramos?

7 A. Yes.

8 Q. Okay. From, like, a standard fingerprint card?

9 A. Yes.

10 Q. Which finger from Mr. Sandoval-Ramos made that print?

11 A. Would you please return to the -- to refresh my memory.

12 Q. Yeah.

13 A. That latent print was identified to the left thumb of
14 Fabian Sandoval-Ramos.

15 Q. And in your opinion, then, is this left thumb the source of
16 the latent print found on Exhibit 99?

17 A. Yes.

18 Q. I would like to pull up a final page from within Government
19 Exhibit 99, which is jpeg 283.

20 Do you recognize what you see in front of you?

21 A. Yes.

22 Q. What is it?

23 A. It is an additional inner page in this steno pad.

24 Q. Do you know which page of the steno pad?

25 A. I do not, no.

Solis - D

663

1 Q. But it's not the same as the first page that we were
2 previously looking at?

3 A. Correct.

4 Q. I see three stickers on this page. Were these three
5 stickers identifiable to you?

6 I'm sorry. Were the prints next to those stickers
7 identifiable?

8 A. Yes.

9 Q. Okay. We'll wait for it to come back to life.

10 (Indicating monitor. Pause.)

11 BY MS. BOLSTAD:

12 Q. Which numbers did you assign to the developed fingerprints
13 on this page?

14 A. I assigned N6.1-9-A, N6.1-10-A, and N6.1-11-A.

15 Q. And were 1-10 and 1-11 the only two identifiable prints?

16 A. Yes.

17 Q. Which suspect, if any, were you able to identify and
18 associate with the fingerprints that you developed?

19 A. The latent print marked as N6.1-10-A was identified to
20 Placido Ramirez-Coronel. And latent print N6.1-11-A was
21 identified to Raul Arcila.

22 Q. And which finger of Mr. Arcila did you identify as having
23 made that fingerprint?

24 A. The right thumb finger.

25 Q. I want to focus on that fingerprint, which is 1-11.

Solis - D

664

1 Let's pull up Government Exhibit 117, just for
2 Mr. Solis, please.

3 I'm going to actually just show you, Mr. Solis,
4 Government Exhibit 117.

5 A. (Handed document.)

6 Q. Do you recognize that page?

7 A. Yes, I do.

8 Q. Is this similar to the comparison that you did for the
9 other print we talked about, which is Government's 116?

10 A. Yes.

11 Q. Okay. Did you make that document?

12 A. Yes.

13 Q. Is it a side-by-side comparison?

14 A. It is.

15 Q. And did you make the numbered marks around this latent
16 print and the known standard?

17 A. Yes.

18 MS. BOLSTAD: The Government would -- moves to offer
19 Government's 117.

20 MR. ANDERSEN: I have no objection.

21 MR. SEPP: No objection.

22 THE COURT: It's received.

23 Please publish.

24 BY MS. BOLSTAD:

25 Q. What is shown on the left side of Government's Exhibit 117?

1 A. A photograph of the latent print developed.

2 Q. Was that developed from the notebook?

3 A. Yes.

4 Q. Okay. And what is shown on the right?

5 A. The known fingerprint used in the comparison.

6 Q. And was it known from a particular subject?

7 A. Yes.

8 Q. Who?

9 A. Raul Arcila.

10 Q. And is that his known right thumb?

11 A. Yes.

12 Q. Was anything particularly significant to you in the
13 comparison?

14 A. Yes.

15 Q. Which portion would you like us to zoom in on?

16 A. Well, what the -- what appears to be the middle, it appears
17 like a double loop area in the middle.

18 Q. What did you observe that was unique in this comparison?

19 A. My screen is showing two known prints. (Pause.)

20 I am now showing a latent print from a previous court
21 exhibit.

22 Q. Stand by. (Pause.)

23 Is this accurate, Mr. Solis?

24 A. Yes, it is.

25 Q. Okay. And so what was unique to you in this fingerprint

1 comparison?

2 A. Well, what I first observed was the double loop formation
3 in this whorl. It's called a whorl print. Whorl prints --
4 there are different types of whorl prints. There is what is
5 called a central pocket loop, a plain whorl, and a -- what's
6 called a double loop whorl. And this is referred to as a
7 double loop whorl.

8 I concentrated in the area at the inner portion of
9 the -- of this whorl, and I noticed what appeared to be an
10 enclosure as well; the lower portion of the -- of the -- of the
11 whorl. And I noticed the bifurcation made on that lower
12 portion. I then went one ridge to the right and up, and I
13 noticed an additional bifurcation from that enclosure. And I
14 would -- then went to a few ridges to the left of that and
15 found where another -- yes, where the ridge appears to do a
16 recurve. Appears to also touch the -- another ridge right
17 above that. And one ridge to the left of that is another
18 bifurcation.

19 And from there, I was able to then proceed and do
20 what's called a ridge count from one point to another. And it
21 went to clearer areas of the -- of the latent print.

22 Q. And in addition to the count, did this side-by-side
23 comparison also have those unique qualities in the same
24 locations?

25 A. Yes.

Solis - X

667

1 Q. And in your opinion, is Mr. Arcila's right thumb the source
2 of the latent print?

3 A. Yes.

4 Q. And just stepping back a step in the analysis, Mr. Solis,
5 did you find two fingerprints on this single page from the drug
6 record?

7 A. I found a total of three, but two were identifiable.

8 Q. And besides Mr. Arcila's print, who was the source of the
9 other fingerprint on the same page?

10 A. That was a subject by the name of Placido Ramirez-Coronel.

11 MS. BOLSTAD: Nothing further on direct.

12 THE COURT: Mr. Andersen.

13 MR. ANDERSEN: Thank you.

14 CROSS-EXAMINATION

15 BY MR. ANDERSEN:

16 Q. Mr. Solis, if I understood you right, what -- what you're
17 testing for basically is the amino acids left by fingerprints.
18 Right? Or by the finger ridges of somebody's hands, or
19 whatever part of their skin?

20 A. Yes. In some cases it's the amino acids and others, it's
21 just any kind of perspiration or moisture.

22 Q. So when we're talking about paper, are we talking about
23 amino acids? Or could it also be the moisture you're talking
24 about?

25 A. It's mostly amino acids.

Solis - X

668

1 Q. Okay. Now, isn't it -- it's true that different people
2 have -- you sort of talked about this earlier, but different
3 people could leave -- could have different types of amino acids
4 or produce more or less amino acids?

5 A. True. Yes.

6 Q. And even the same person could produce more or less amino
7 acids at any particular time?

8 A. Yes.

9 Q. Okay. And when you're -- when you're testing a
10 fingerprint, then, you're not necessarily able to tell when in
11 time that fingerprint was left. Right?

12 A. Correct.

13 Q. Or how long it had been there, say?

14 A. Correct.

15 Q. And, now, the prosecutor was using some words like
16 "confirmed" and "made," and you were using terms more like
17 "identified."

18 Now, is it true that there's not really a -- a
19 confirmation, necessarily? What -- how would you describe what
20 the process is you're doing?

21 A. Well, we are trying to identify a latent print as having
22 been made by a particular subject, and that is -- that is
23 because the latent print -- or, I mean, a known fingerprint of
24 a person remains persistent and is known to be unique to an
25 individual person. So my term is referred to as being

1 identified to.

2 Q. Now, is that known to be unique, or is that just assumed to
3 be unique?

4 A. It is known to be unique.

5 Q. Has there been a test of every single fingerprint in the
6 world of everybody?

7 A. No, but there has been sufficient comparisons in the last
8 hundred years to come to the conclusion that fingerprints are
9 made random -- I mean, the finger ridges are created random and
10 unique to every individual.

11 Q. So you know it based on -- on that?

12 A. On studies, yes.

13 Q. So -- so are you saying there are studies saying that
14 fingerprints are unique?

15 A. Yes.

16 Q. Okay. Is there a standard by which you would determine
17 whether or not an identification is adequate? For example, if
18 you had three similarities between the latent print and an
19 identifiable print or 10, or 15, or 20, is there any standard
20 like that?

21 A. No.

22 Q. So that up to you as the individual identifier, or how is
23 that -- is that up to you?

24 A. Yes. And it's also based on circumstances of -- unique to
25 a particular case.

Solis - X

670

1 May I give an example?

2 Q. Sure.

3 A. An example would be if you have a crime committed in a
4 boat, and you have a bloody print left on the murder weapon
5 with only -- with three points of identification, only three
6 visible characteristics. You may have a pattern or just a
7 ridge flow that you cannot use for identifiable purposes but
8 you only have a limited number of people on that boat.

9 So with that limited number of people and the three
10 identifiable points of characteristics that do not match
11 anybody else, you can pretty much ascertain that that print was
12 made by the individual.

13 Q. Well, it sounds like that's excluding others, not actually
14 making an identification. That's just excluding other
15 identifications. Right?

16 A. It is an exclusion of others. And based on the known-to-be
17 bloody print and having those characteristics that do not match
18 anybody else, you're now left by excluding. Yes, you're making
19 an identification to the one subject that was not excluded.

20 Q. So if you were presented with a -- I guess this
21 hypothetical with the boat, then you would assume that it would
22 be one of the members that you knew to be in the boat, based on
23 whatever evidence you had?

24 A. Correct.

25 Q. Okay. Is there any way, also, to tell, for example, if --

Solis - X

671

1 I mean, we already talked about the timing. There's no way to
2 tell the timing of a fingerprint. But is there a way to tell
3 if something else was on the page, like writing or any other
4 substance, or anything like that, when the fingerprint was
5 made?

6 A. No.

7 MR. ANDERSEN: Okay. Thank you. That's all.

8 THE COURT: Counsel.

9 MR. SEPP: Just one question.

10 CROSS-EXAMINATION

11 BY MR. SEPP:

12 Q. Did you check every page, front and back, in N6?

13 A. Yes.

14 MR. SEPP: Okay. That's all I have. Thank you.

15 THE COURT: Redirect, Ms. Bolstad?

16 MS. BOLSTAD: Nothing, your Honor.

17 THE COURT: All right. Sir, you are free to go.

18 Ms. Bolstad.

19 MS. BOLSTAD: The final witness will be Detective

20 Andersen.

21 We will finish by 5:00.

22 THE COURT: Well, that's good to know. I had some
23 other things in mind in addition. But, yes, all right.

24 Detective, would you come back to the witness chair.

25 She's already sworn.

Andersen - D

1 Yes, jurors, you'll recall this witness took the oath
2 previously. She remains under oath.

3 Go ahead and take a seat.

4 THE WITNESS: Thank you.

5 DIRECT EXAMINATION

6 BY MS. BOLSTAD:

7 Q. Detective, we've heard about phones seized in this case.

8 Were you able to examine those phones for evidence of
9 drug trafficking?

10 A. Yes, I was able to examine the downloaded contents of those
11 phones.

12 Q. Let's start with Ms. Godvin, Mr. Rosa, and Mr. Baker; their
13 phones.

14 Did you examine Ms. Godvin's phone?

15 A. Yes, I did.

16 Q. Did you observe any evidence suggesting that she had a
17 source for heroin other than Mr. Rosa in March 2014?

18 A. No.

19 Q. Did you examine Mr. Rosa's phone?

20 A. I did.

21 Q. Did you observe any evidence suggesting that he had a
22 source for heroin other than Mr. Baker in -- in March 2014?

23 A. No.

24 Q. Did you examine Mr. Baker's phone?

25 A. I did.

Andersen - D

1 Q. Did you observe any evidence suggesting that he had a
2 source for heroin, other than Mexican Bobby, in March 2014?

3 A. No.

4 Q. Let's talk about the traffic stop on April 2nd.

5 Did investigators seize a cell phone from Mr. Arcila?

6 A. Yes.

7 Q. Were you able to examine the contents of that phone?

8 A. Yes.

9 Q. What was the phone number assigned to Mr. Arcila's phone?

10 A. If you don't mind, I've made a summary of those notes. I
11 would like to refer to it, as we go, for those numbers.

12 Q. Please do so.

13 A. Thank you.

14 Q. If there's an objection, we'll hear it.

15 A. The number in Mr. Arcila's phone as the contact for that
16 phone was 971-279-0581.

17 Q. Were you able to obtain the call logs from Mr. Arcila's
18 phone, meaning the calls received by the phone and the calls
19 placed by the phone?

20 A. Yes.

21 Q. And have you compiled those logs into Exhibit 126?

22 A. Yes.

23 MS. BOLSTAD: The Government would move to admit 126.

24 MR. ANDERSEN: I have no objection.

25 MR. SEPP: No objection.

Andersen - D

1 THE COURT: Thank you. Received.

2 Please publish and proceed.

3 BY MS. BOLSTAD:

4 Q. And on the screen in front of you, is this the first page
5 of that exhibit of the call logs from Mr. Arcila's phone?

6 A. Yes.

7 Q. I see the parties are listed at points on this sheet.

8 Are those the contacts as he had them listed in his
9 phone?

10 A. Correct. If there was a contact for a number stored in the
11 contacts section of the phone, the program that extracted that
12 data from the phone, as I would print these or run these
13 reports, would combine those into one item.

14 So where it shows the "to" or "from," and a phone
15 number, the name that appears next to it -- if there is one --
16 comes from that contact list from that same device.

17 Q. Let's talk about Mr. Ramirez-Coronel, the traffic stop on
18 April 2nd.

19 Did agents seize a cell phone from him?

20 A. Yes.

21 Q. Were you able to examine the contents of that phone?

22 A. Yes.

23 Q. And did you put the call logs from within that phone into
24 Government Exhibit 127?

25 A. Yes.

Andersen - D

1 MS. BOLSTAD: Government moves to admit 127.

2 MR. ANDERSEN: No objection.

3 MR. SEPP: No objection.

4 THE COURT: Thank you. Received.

5 Publish, and proceed, please.

6 BY MS. BOLSTAD:

7 Q. Like Mr. Arcila's phone, were the contacts as saved what is
8 shown in Exhibit 127?

9 A. Yes.

10 Q. So these are not your labels for the contacts, but those
11 are the labels that were in the phone itself?

12 A. Exactly.

13 Q. Let's go to location 2.

14 How many cell phones were seized from location 2 that
15 belonged to Fabian Sandoval-Ramos?

16 A. Two.

17 Q. And is one of those the dumpster phone?

18 A. Yes.

19 Q. We'll get to that in a moment.

20 Is the other the iPhone?

21 A. Yes.

22 Q. Is that Government's 109?

23 A. I don't have a reference to know if that is accurate. But
24 if you say it is, I believe it would be.

25 Q. Okay. So let's talk about the iPhone.

Andersen - D

1 Were you able to examine the contents of that phone?

2 A. Yes.

3 Q. And what was the phone number of it?

4 A. The contact number for the iPhone was 503-313-6547.

5 Q. When you examined the iPhone, in general -- oh, and let me
6 just stop here and -- did you put the information that you're
7 testifying to into a summary?

8 A. I did.

9 Q. And right now, are we laying a foundation for your summary
10 to be later shared with the jury?

11 A. Yes.

12 Q. Okay. And so these -- these items might become known to
13 you later, they might not.

14 When you examined the iPhone from Fabian
15 Sandoval-Ramos's house, what was the phone number assigned to
16 that phone?

17 A. The one I just stated, 503-313-6547.

18 Q. Did you observe evidence of drug trafficking on that phone?

19 A. No.

20 Q. Did it appear to be a normal usage phone? By normal usage,
21 I mean pictures of family, friends, et cetera?

22 A. I don't recall what photos were on the phone.

23 Q. Okay. Did Mr. -- did Fabian Sandoval-Ramos's iPhone, did
24 it have the number for Raul Arcila in it?

25 A. It did.

Andersen - D

1 Q. Saved as the same number you testified to earlier for Raul
2 Arcila?

3 A. It wasn't saved to the name Raul Arcila, but that phone
4 number was saved in the contact list.

5 Q. What was it saved as?

6 A. Pelon.

7 Q. P-E-L-O-N?

8 A. That's right.

9 Q. In examining the contents of the phone seized from
10 Mr. Ramirez-Coronel, Placido Ramirez-Coronel, did that phone
11 have Mr. Raul Arcila's phone number in it?

12 A. It did.

13 Q. What was it saved as?

14 A. Pelon.

15 Q. And when you were looking in Placido Ramirez-Coronel's
16 phone, did you observe the iPhone phone number of Fabian
17 Sandoval-Ramos, 503-313-6547?

18 A. Yes.

19 Q. And what was that contact number saved as in Placido
20 Ramirez-Coronel's phone?

21 A. That was saved as one word, "Flavian," which was
22 F-L-A-V-I-A-N.

23 Q. Was that same iPhone number for Flavian, was that number
24 saved in Raul Arcila's phone?

25 A. Yes.

Andersen - D

1 Q. What was it saved as?

2 A. As one word, "Fabi," F-A-B-I.

3 Q. Do you believe these to be nicknames for Fabian?

4 A. That would be my assumption.

5 Q. Did you observe any other contacts in Placido
6 Ramirez-Coronel's phone for a similar nickname?

7 A. Yes.

8 Q. What was the nickname?

9 A. Let me refer to my notes here for a moment.

10 There was a nickname "Faby," F-A-B-Y, as -- in the
11 contact list in Placido Ramirez's phone.

12 Q. What was the number associated with F-A-B-Y?

13 A. That was 206-473-7989.

14 Q. Let's talk about the phone found in the dumpster at
15 location 2.

16 Were you able to examine the contents of that phone?

17 A. Not the call contents or the text message contents, or
18 things of that nature.

19 Q. Okay. Were you able to determine the phone number assigned
20 to that broken phone?

21 A. Yes.

22 Q. Did part of your determination involve looking at
23 Mr. Ramirez-Coronel's phone and that Faby, F-A-B-Y, number?

24 A. Part of it, yes.

25 Q. Okay. Did you look into the phone number assigned as Faby

Andersen - D

1 in the Placido Ramirez-Coronel's phone? And what I'm asking is
2 did you request records from the cell phone company for
3 206-473-7989?

4 A. Yes. Those requests -- those records were requested, yes.

5 Q. And did you receive those records?

6 A. Yes.

7 Q. Which phone company provided them?

8 A. It was a prepaid phone from Verizon.

9 Q. And did you place those records from Verizon in
10 Government's Exhibit 124?

11 A. I believe so, yes.

12 MS. BOLSTAD: Government moves to offer 124.

13 MR. ANDERSEN: No objection.

14 MR. SEPP: No objection.

15 THE COURT: Received.

16 Please post it, and proceed.

17 BY MS. BOLSTAD:

18 Q. Tell the jury what we see in these call records, in terms
19 of the columns.

20 A. Sure.

21 The first column on the left is labeled "Network
22 Element Name," and that's a column that refers to a geographic
23 location that covers hundreds of cell phone towers. Lots and
24 lots of cell phone towers. Other phone records that we'll
25 sometimes review will have specific cell phone towers

Andersen - D

1 themselves listed for calls, where this one just gives a
2 network element. So it's just a name for -- typically a region
3 that covers a very large number of cell phone towers.

4 The next number over is the mobile directory number,
5 which is just a number for which we've requested records. So
6 you'll see, as -- every single line of this column has that
7 same number.

8 The next number is a dialed digit number, which is
9 the number dialed by the person making the phone call. And the
10 next number is a call direction, which shows whether it's an
11 incoming or an outgoing call.

12 The next column is listed "Seizure DTTM," for date
13 and time. And it lists the date -- date and time that the
14 record was created. And the seizure duration is listed in
15 seconds for the length of seconds of that particular call.

16 And then finally, at the very end, is the calling
17 party number, which lists which phone number was used to place
18 the call.

19 Q. When you sent that subpoena request, did you -- did you
20 refer to the ESN number from the seized phone?

21 A. I don't know if that was included as part of the request in
22 general, but it was something that was received in response.

23 Q. Okay. And so what was the -- what are the last three
24 digits of the ESN on the back of the dumpster phone?

25 A. That's E48.

Andersen - D

1 Q. And did that ESN number come back as listed on those
2 Verizon records?

3 A. It did.

4 Q. And did that give you a clue about whether the -- what the
5 phone number might be to the dumpster cell phone?

6 A. Yes. That same -- the whole entire number was a match from
7 the records provided by Verizon for that 206 phone number and
8 the actual device recovered in the dumpster. Looking at the
9 back of that device, you can see that number on the back.

10 Q. And what does "ESN" stand for?

11 A. I'm not entirely sure, but I think it stands for, like,
12 equipment serial number or electronic serial number.

13 And it's -- I know that the purpose of that number is
14 it's a unique number that identifies a particular handset.

15 MS. BOLSTAD: The government moves -- oh, thank you.

16 BY MS. BOLSTAD:

17 Q. We've heard evidence about Mr. Baker's calls to a Mexican
18 Bobby phone number with area code 442.

19 A. Yes.

20 Q. Did you request records for the provider -- the service
21 provider for that phone number?

22 A. For the 442 number, yes.

23 Q. Okay. And did you receive those -- those toll records and
24 use them for Government Exhibit 123?

25 A. Yes.

Andersen - D

1 MS. BOLSTAD: Government moves to offer Exhibit 123.

2 MR. ANDERSEN: No objection.

3 MR. SEPP: No objection.

4 THE COURT: Thank you. Received.

5 Please publish, and proceed.

6 BY MS. BOLSTAD:

7 Q. During the March 2014 time frame, based on these tolls for
8 the 442 number, were you able to determine the location, the
9 physical location of the 442 phone?

10 A. We could get an idea based on that network element name.

11 It would give a large region.

12 So in this case, on this first page, if you look down
13 along that first column, the first many records list Los
14 Angeles gateway, followed by Los Angeles 44, which would be
15 network nicknames for that large group of towers there.

16 And it's just -- it's just a matter of where the call
17 is routed through. I don't think it necessarily absolutely
18 confirms that the handset is present in that location. In
19 fact, as we go forward through the list, you'll see that at
20 times the network element will jump from one to the next, even
21 within a very brief period of time. So unlike a specific cell
22 phone tower, where you can pinpoint where that tower is
23 located, this is just listing a larger area.

24 Q. Okay. And although you cannot pinpoint exact location, do
25 you believe that the lengthy sequences of Los Angeles, Los

Andersen - D

1 Angeles, Los Angeles, do you believe that that means the phone
2 was in the area of Los Angeles during those time frames?

3 A. I believe that it could have been, yes.

4 Q. Was there also a time period in March 2014 where the
5 network element or location identifier listed Hillsboro?

6 A. There is. In fact, even on this page, if we go back one,
7 there's a line where it lists Hillsboro individually in the
8 midst of other Los Angeles locations. Whereas, going
9 forward -- like predominantly, all through the date of March
10 16th, all of the calls are routed through that Hillsboro
11 network name as a call.

12 Q. And in the same time period, Detective Andersen, did you
13 compare the tolls from the phone with the 206 area code, the
14 phone found in the dumpster?

15 A. Yes.

16 Q. What was the location of that dumpster phone in the same
17 relevant periods?

18 A. If you would like to bring it back up to the -- the prior
19 record that we just reviewed.

20 Q. I think that's Government's 124.

21 A. And so we begin in Hillsboro. And continuing to move
22 forward, we are seeing Hillsboro, Seattle, Hillsboro as a large
23 area for the call network.

24 And then later in the month, Los Angeles is listed;
25 among other locations.

Andersen - D

1 Q. What about from March 31st to April 2nd?

2 A. March 31st through April 2nd, Hillsboro, Seattle shown on
3 this page here. The next page, Hillsboro, Seattle, Seattle,
4 Hillsboro, and again.

5 Q. And can you say with certainty where the phone was at any
6 particular date?

7 A. No.

8 Q. Okay. Are you comfortable with the idea that these
9 locations are associated with that phone somehow?

10 A. Yes.

11 Q. Do you also have call records that you found within the
12 cell phones seized from Mr. Arcila and Mr. Ramirez-Coronel,
13 which were admitted as 126 and 127?

14 A. Yes.

15 Q. Did you examine those seized cell phone call logs in
16 conjunction with the toll records provided by the service
17 providers for the other two phones?

18 A. I did.

19 Q. What were you looking for?

20 A. I was looking to see if there was a pattern of contact or a
21 link of contact as you move from one person involved in this
22 case to another, to see who was talking to whom.

23 Q. I would like to show you, and you alone, Government Exhibit
24 129.

25 I'll show it to you in paper form, while I'll let you

Andersen - D

1 work on that.

2 A. Thank you. (Handed document.)

3 Q. Did you make this document?

4 A. I did.

5 Q. How did you make it?

6 A. What I made is -- it began with a spreadsheet, where I
7 copied and pasted the different downloads from the different
8 devices, whether it was from the phone company or whether it
9 was extracted from the phone itself. And then put them all in
10 the same order so they were in chronological form. So that
11 rather than looking only at one person's calls and then moving
12 on and looking at only another person's calls, I was able to
13 see all of the calls in one setting, organized by date.

14 Q. Did you first focus on a particular time period for this
15 document?

16 A. For this document, I focused only on April 2nd.

17 Q. Why did you focus on that date?

18 A. That was a date that we had a lot of information that we
19 knew that was directing certain events that were happening,
20 calls that we were directing to be placed. And then also
21 things we knew to be true as far as traffic stops we had
22 conducted -- or a traffic stop, I should say, and then search
23 warrants that were later executed. So I had different times to
24 refer to that I knew certain events were occurring, to compare
25 to the phone calls that were made and received.

Andersen - D

1 Q. Okay. And have you checked and rechecked the accuracy of
2 your summary?

3 A. I have.

4 Q. And did you check it against those items received from the
5 phone companies and from the seized phones?

6 A. I did. And I believe them to be accurate, to the best of
7 my ability.

8 MS. BOLSTAD: The Government moves to admit summary
9 Exhibit 129.

10 (Pause, counsel conferring.)

11 MR. ANDERSEN: I have no objection to that your
12 Honor.

13 THE COURT: Thank you.

14 MR. SEPP: No objection except for that the jury be
15 known that they can compare it to the actual logs themselves to
16 show that it is indeed accurate.

17 THE COURT: So, Jurors, a summary exhibit is offered
18 as a convenience to you, to help collect data points about
19 evidence, but the summary isn't evidence. It is just the
20 witness's effort to collect certain parts of it. So it's only
21 as good as the reliability of the data collected. And it's --
22 for you to rely on the summary, you have to be able to know for
23 yourself whether it's accurate, and that would be left for you
24 to determine.

25 So as a summary, the witness is -- I'm sorry, the

Andersen - D

1 exhibit is received.

2 Go ahead.

3 BY MS. BOLSTAD:

4 Q. And so please explain to the jury what this document
5 contains.

6 A. At the very top, I included a legend, which would just show
7 which phone number belongs to which person involved in this
8 case.

9 Starting with the top, with the phone number that was
10 saved in Shane Baker's two phones as Mexican Bobby, the 442
11 number, followed by the phone that was found in the dumpster at
12 location No. 2, followed by the phone that was seized from Raul
13 Arcila with the corresponding phone number, the phone that was
14 seized from Placido Ramirez-Coronel, the phone -- the iPhone
15 that was found within location 2, and then tolls received for
16 another number as well.

17 And then below that list, in order of date and time,
18 from older to newer, with the hours listed in sort of a 24-hour
19 format where, you know, 1:00 p.m. would be 1300 hours, listing
20 the calls; date and time the call was captured up by the tolls
21 or by the download; the length of the call; the person -- or
22 the phone number that initiated the call; the phone number that
23 received the call or the destination number; the contact name,
24 if any, that was from a device. And then a description on the
25 far right there of the summary that I had created of what

Andersen - D

1 the -- each individual line was.

2 MS. BOLSTAD: Could we go to the bottom of this 129.

3 MS. COOKE: This page?

4 MS. BOLSTAD: This page.

5 I'm sorry, the bottom of the next page.

6 BY MS. BOLSTAD:

7 Q. I see in the middle of this a black mark for traffic stop
8 on Honda.

9 Did you enter that information?

10 A. I did.

11 Q. And what did you base that on from where you entered it in
12 the chart?

13 A. I based it on our knowledge of when we had made those
14 calls, as far as when we saw movement of that vehicle, and then
15 about how long after that I recall the traffic stop occurring,
16 as well as the fact that after about that seven -- or, sorry,
17 5:25 to 5:30 p.m. range, any phone calls that were placed to
18 Placido Ramirez-Coronel's phone or Raul Arcila's phone were not
19 able to be answered, did not appear to be answered; because at
20 that point they were both detained.

21 Q. Okay. We are having a little bit of a technical problem,
22 so I want to switch gears and move to your examination of other
23 phones in this case. Okay? And we'll come back to this topic
24 once we're set.

25 Did you look at Mr. Baker's phone content, about his

Andersen - D

1 contacts with Mr. Rosa in the week leading up to Justin
2 Delong's death on March 29?

3 A. I did.

4 Q. Did you see messages between Mr. Baker and Mr. Rosa?

5 A. Yes.

6 Q. Starting on March 22, what did you observe?

7 A. I would like to refer to my police report during this,
8 to -- to summarize the messages I had reviewed in those
9 documents.

10 Beginning on March 22nd -- give me just one moment to
11 find the right spot here. (Pause, referring.)

12 Okay. So I saw messages from -- back and forth
13 between Michael Rosa's phone, which was saved in Baker's phone
14 as Mikey 2, which is a phone number of 971-804-1412, with Shane
15 Baker's phones on March 22nd, 2014; March 24th, 2014; and March
16 29th, 2014.

17 Q. Why those particular dates?

18 A. I focused on dates that were within the last week, leading
19 up to the overdose death of Justin Delong.

20 Q. Okay. And what did you learn?

21 A. So I learned that on March 22nd, Michael Rosa's phone sent
22 Shane Baker's phone a message at 11:13 p.m., stating that his
23 order was short. And I am familiar with this in prior
24 investigations. That, you know, again, drugs are sold by
25 weight. And so if a person orders a certain amount, it's an

Andersen - D

1 order placed by a weight requirement or a weight request. And
2 if what's provided doesn't weigh out to be what they expect,
3 that would be an order being short.

4 Another conversation from the 23rd, from 10:45 p.m.,
5 they discuss a meeting near Powell and 82nd Avenue in Portland,
6 where Baker, his phone sends a message to Rosa's phone, stating
7 that he had to leave the area due to cops being everywhere.
8 And Rosa responds with a message, No worries. Not like I'm
9 out, or anything.

10 And I interpret that to mean that it wasn't a problem
11 for Rosa because he wasn't out of heroin, and it wasn't a
12 problem to wait.

13 The following day, at 10:29 p.m., Shane Baker's phone
14 sent Michael Rosa's phone a message, saying:

15 I'm on my way to town now. Got yours on me for
16 five or six. How many?

17 Rosa responds: Five.

18 And Baker replies: Okay. 5.20 is what I have for
19 you.

20 And the message exchange continues back and forth
21 with a discussion to meet at McDonald's on Foster, at 82nd.

22 Q. Were there other messages between Mr. Rosa's phone and
23 Mr. Baker on March 28th?

24 A. Yes.

25 Q. Tell us about that, in brief.

Andersen - D

1 A. On March 28th at 3:58 p.m., Baker's phone sent a message to
2 Rosa's phone that read:

3 What's up with you? I need to grab that money.

4 Rosa replied, about nine hours later, at 1:14 a.m.,
5 on March 29th, 2014, saying:

6 Sorry, didn't see your message until right now.

7 I'm going to need to grab more tomorrow, anyway,
8 so I'll have it all for you.

9 Baker's phone replied: Okay. Just call me in the
10 morning then.

11 And the following afternoon, March 29th, 2014, at
12 1:07 p.m. -- I have a typo in my report, where it says:

13 Rosa texts Baker his address. Baker --

14 THE COURT REPORTER: I need you to speak slower,
15 please.

16 THE COURT: I have a typo in my report?

17 THE WITNESS: Yes. It should read:

18 Baker texts Rosa his address as 4200 Southwest
19 Canyon Road, 107 Ave., Beaverton, Oregon.

20 BY MS. BOLSTAD:

21 Q. Detective Andersen, we've heard evidence in this case that
22 Mr. Rosa went to Ohio and returned in -- in March and around
23 this time period.

24 While he was gone, do you know who was using
25 Mr. Rosa's phone?

Andersen - D

1 A. I believe that Mr. Goshorn was using Mr. Rosa's phone.

2 Q. Okay. And was that with Mr. Rosa's permission?

3 A. Yes.

4 Q. And was Mr. Goshorn operating at Mr. Rosa's direction?

5 A. Yes.

6 Q. Still in furtherance of the conspiracy?

7 A. Yes.

8 Q. Okay. Let's talk about Mr. Baker's phone content about any
9 contacts with the Mexican Bobby phone number in the week prior
10 to Justin Delong's death.

11 Did you see such connection between Baker and Mexican
12 Bobby?

13 A. I did.

14 Q. Tell us about that.

15 A. So beginning, again, with a review starting a week prior,
16 on March 22nd, 2014, we see Baker's phone calling the Mexican
17 Bobby number at 8:24 p.m. and 10:25 p.m. that same day, March
18 22nd.

19 And let me find --

20 (Pause, referring.)

21 BY MS. BOLSTAD:

22 Q. Do you know the total number of calls placed or received
23 between Mr. Baker and the 442 Mexican Bobby number?

24 A. I believe it was 30 calls during that time frame.

25 Q. The one-week time frame?

Andersen - D

1 A. Yes.

2 Q. How many of those 30 calls were at your direction?

3 A. 11 calls.

4 Q. And are those 11 calls then something that you or Detective
5 McNair observed happening?

6 A. Yes.

7 Q. Was there any pattern of activity between Mr. Rosa's calls
8 with Mr. Baker compared to Mr. Baker's calls to Mexican Bobby
9 in that week time frame?

10 A. Yes.

11 Q. What was the pattern you observed?

12 A. (Pause, referring.) Just one moment. (Pause, referring.)

13 So I see that Baker's phone has contacts with Mexican
14 Bobby in proximity to when there are meets with Michael Rosa or
15 conversations with Michael Rosa.

16 Prior to the text that Rosa had sent about being
17 shorted on March 22nd, Shane Baker's phone had called the
18 Mexican Bobby number six times on that date.

19 On March 29th, at 10:29 p.m., Baker had agreed to
20 sell 5 ounces to Rosa in Portland, as we discussed a bit ago.
21 Foster and 8 -- 82nd Avenue. And Baker had contacted the
22 Mexican Bobby number twice on March 24th, at 10:25 p.m. and
23 again at 11:32 p.m.

24 Q. Did you have information, when you were reviewing these
25 phone tolls, about March 29th and Mr. Rosa's meeting with

Andersen - D

1 Mr. Baker on the afternoon of the 29th?

2 A. I did. I had reviewed all of this after all of my
3 interviews were concluded.

4 Q. And on that afternoon, when Mr. Rosa reports that he was
5 with Mr. Baker when Mr. Baker contacted his source, did you
6 look for that time frame on March 29th, in the records for
7 Mexican Bobby?

8 A. I did.

9 Q. What did you observe?

10 A. I saw that the phone records for that Mexican Bobby number,
11 the 442 number, showed a call from one of Baker's phones to
12 that Mexican Bobby number at 4:03 p.m. And then additional
13 calls that evening at 8:48 p.m. and 8:54 p.m.

14 Q. Is that consistent with what Mr. Rosa reported about when
15 he met with Mr. Baker?

16 A. Yes. Mr. Rosa told me he met with Mr. Baker around 4:00
17 p.m. that day on the 29th. And that Mr. Baker had called his
18 source, and that Mr. Baker was supposed to be resupplied later
19 that evening; which is why he could only sell Baker 4 ounces
20 that afternoon instead of the 5 that Rosa had requested.

21 Q. Let's talk about the 442 number then.

22 I'm curious about -- you're seeing these patterns.

23 Is that correct? With Baker calling Mexican Bobby?

24 A. Yes.

25 Q. Did you look, then, at what would happen with Mexican Bobby

Andersen - D

1 after Mr. Baker called that number?

2 A. Yes, to see who would Mexican Bobby call.

3 Q. And who did Mexican Bobby call?

4 A. Mexican Bobby didn't call.

5 Q. Did he not call anyone on that phone that -- any of the
6 records that you've put into evidence in this case?

7 A. Right. There were no calls placed out that would explain
8 contacts with numbers like Placido Ramirez-Coronel or others
9 involved in this case.

10 Q. Well, we're talking about patterns. Did you look at what
11 would happen when Mr. Baker called that 442 number? Did you
12 look for some other phone that might have made outgoing calls
13 after that?

14 A. Yes.

15 Q. What number were you able to identify a phone number that
16 made outgoing calls?

17 A. Yes.

18 Q. What was that number?

19 A. That was 760-296-9882.

20 Q. And I want to show you a demonstrative.

21 I hope it doesn't break the whole system.

22 THE COURT: We're good.

23 BY MS. BOLSTAD:

24 Q. What does -- I'm showing you what is Government
25 demonstrative 130.

Andersen - D

1 What -- what do you see?

2 A. I see images of Shane Baker, Placido Ramirez-Coronel,
3 Fabian Sandoval-Ramos, and Raul Arcila at the top of the page.
4 Superimposed over a map are Shane Baker and Placido
5 Ramirez-Coronel hovering over Oregon. And a phone number down
6 near the bottom of the page, the Mexican Bobby 442 number, with
7 a line drawn from Shane Baker, up in Oregon, down to that
8 number, the 442, which is on top of the state of California.

9 MS. BOLSTAD: The Government asks permission for
10 publication.

11 THE COURT: As a demonstrative?

12 MS. BOLSTAD: Yes, 130.

13 THE COURT: Any objection?

14 MR. ANDERSEN: So we're not offering this into
15 evidence?

16 THE COURT: It is only a visual aid, and it will only
17 be used in closing arguments, not to go to the jury. It is a
18 demonstrative exhibit, not a summary.

19 MR. ANDERSEN: I have no objection.

20 THE COURT: Go ahead.

21 MR. SEPP: No objection.

22 THE COURT: As a demonstrative. So this is just a
23 picture of the testimony, so to speak. It will be used when
24 the case is argued to you tomorrow.

25 You won't have it in the jury room with you, though.

Andersen - D

1 So if you think it's of use, you may make notes about it.

2 Ms. Bolstad.

3 MS. BOLSTAD: Thank you, your Honor.

4 BY MS. BOLSTAD:

5 Q. And so is this the pattern that you've testified to that
6 you were looking at as when Shane Baker would call Mexican
7 Bobby?

8 A. Yes.

9 Q. And then you testified that that 442 number did not make
10 outgoing calls after said calls took place?

11 A. Correct.

12 Q. And what was the other number you identified that did make
13 outgoing calls?

14 A. 760 -- sorry -- 296-9882.

15 Q. Okay. How did you make the determination that there was
16 this other phone, 760-296-9882?

17 A. In reviewing all of the records together as a group, we're
18 looking at one and then referring to another to see. As Shane
19 Baker is calling that Mexican Bobby number, what -- what phone
20 numbers are calling Placido Ramirez-Coronel and Fabian
21 Sandoval-Ramos and Raul Arcila. And I found that there was a
22 number that very commonly was calling Placido Ramirez-Coronel
23 after Shane Baker would call this Mexican Bobby number. And
24 the number that called Placido Ramirez-Coronel after Shane
25 Baker would place those calls was that 760-296-9882 number.

Andersen - D

1 Q. Were you able to determine where the 760 number was
2 physically located during this pattern that you're talking
3 about?

4 A. No. The records I received were from Verizon, and they
5 were the same as what we just looked at for the other 206
6 number, where it just lists a larger market name.

7 Q. Do you have a general geographic area?

8 A. In a similar way, at times, it appears to be in Oregon or
9 Washington, and at times it appears to be in California.

10 Q. Okay. Did you observe any phone calls between the Mexican
11 Bobby phone number and either of the numbers that you have
12 linked to Fabian Sandoval-Ramos?

13 A. Yes.

14 Q. Tell us about that.

15 A. There was one call that was in the phone records provided
16 by Verizon for the 442 number from March 2nd to the number that
17 was associated to Fabian Sandoval-Ramos's iPhone.

18 Q. Given that the 442 phone number appears to be in the
19 general geographic area of California during this time frame --
20 and is that the case? It was in California during the week
21 before Mr. Delong's death?

22 A. Correct. There's a brief period of time around the very
23 middle part of March where it appears to potentially be either
24 in Los Angeles or in the Oregon, Hillsboro market.

25 Q. What does that fact mean to you?

Andersen - D

1 A. That when Shane Baker would call the number he had to
2 obtain heroin, the person he was calling was likely not the
3 person who was delivering the heroin to him. That he was
4 calling a dispatcher phone, as we've heard about.

5 Q. Did you look for the 760 phone number in Placido's phone?

6 A. I did.

7 Q. What was it saved as in Placido Ramirez-Coronel's phone?

8 A. That was saved as one word -- one word of "Che," C-H-E.

9 Q. And that -- did you look for the 760 phone number in Fabian
10 Sandoval-Ramos's iPhone?

11 A. I did.

12 Q. Did you find this number in his iPhone?

13 A. I did.

14 Q. Was it saved as a contact?

15 A. Yes.

16 Q. What was the name of the contact?

17 A. It was one letter: "G."

18 Q. I want to turn your focus to a very specific time frame:
19 April 2nd, 2014, the hours before the buy that Shane Baker set
20 up that day.

21 Did you examine that time period closely?

22 A. I did.

23 Q. And did you examine it in a context of your phone tolls and
24 the seized call logs from the phones?

25 A. I did.

Andersen - D

1 Q. Did you follow the same process you've already described in
2 making that summary Exhibit 129?

3 A. Yes.

4 Q. And did you make an additional Exhibit -- a summary Exhibit
5 131?

6 You might know the number. It's on --

7 A. I did not make that.

8 Q. Did you assist in the production of that document?

9 A. I did.

10 Q. Is this data, in 131, from your summary 13 -- I'm sorry.
11 From your summary 129?

12 A. It is. I've compared it line by line, and the data on this
13 is reflected in my summary.

14 MS. BOLSTAD: The Government moves to offer summary
15 Exhibit 131.

16 THE COURT: As a summary, yes.

17 Counsel, any objection?

18 MR. SEPP: Sorry. No.

19 MR. ANDERSEN: No.

20 THE COURT: Than you.

21 BY MS. BOLSTAD:

22 Q. Detective Andersen, could you please go through the data on
23 summary Exhibit 131 with the jury and don't go too fast.

24 A. Sure.

25 So what we have on the left is a list of dates and --

Andersen - D

1 I'm sorry. Just a list of times, followed by a summary of
2 who's calling whom, with some faces to the names, to the right.

3 And so, beginning, all of these calls are on April
4 2nd of 2014. The first is Shane Baker calling the Mexican
5 Bobby number he has saved in his phone, at our direction, to
6 order the 8 ounces that we later seized. And that call was
7 placed at 3:43 p.m.

8 Q. And so this -- for this entire summary exhibit, is every
9 orange coded entry a call from Mr. Baker's phone?

10 A. Yes.

11 Q. Or to --

12 A. Or to.

13 Q. -- Mr. Baker's phone?

14 A. Correct.

15 Q. And were each of those orange entries actually observed by
16 you or Detective McNair on Baker's phone?

17 A. Yes.

18 Q. Okay. What else do you see?

19 A. So the next line listed is a call at 4:11 p.m., where that
20 number, the 760 number, saved as Che in Placido Ramirez's
21 phone, called Placido Ramirez-Coronel.

22 That's followed by Placido Ramirez returning another
23 call to Che at 4:26 p.m. And at 4:48 p.m., Placido
24 Ramirez-Coronel called Fabian Sandoval-Ramos.

25 At 4:49 and 4:53 p.m., there were two calls between

Andersen - D

1 Che and Placido Ramirez-Coronel.

2 And then at 4:58 p.m., Baker calls the Mexican Bobby
3 number, the 442 number, to say that he's arrived at the
4 7-Eleven.

5 Q. After that call was placed by Mr. Baker at 4:58, is that
6 when Detective McNair notified surveillance teams to be on the
7 lookout? For move --

8 A. That's my understanding of that.

9 Q. On the lookout for movement?

10 A. Correct.

11 Q. Okay. So what happened in the phone records after
12 Mr. Baker arrived at the meeting location?

13 A. At 4:59 and 5:19 p.m., there were two calls between the Che
14 number, the 760 number, and the Placido Ramirez-Coronel number.

15 And at 5:19 p.m., the Mexican Bobby number called
16 Shane Baker, and the person on the phone asked where Shane
17 Baker was. And Shane Baker told the person he had arrived.

18 A minute later, at 5:20 p.m., the Che number again
19 called Placido Ramirez-Coronel. And one minute later, Shane
20 Baker received a phone call from the number he had stored as
21 Mexican Bobby, the 442 number, telling him to change locations;
22 to go to the Lowe's instead of the 7-Eleven.

23 At 5:22 p.m., Placido Ramirez-Coronel calls the 760
24 number he has saved as Che. And one minute later, Shane Baker
25 receives a phone call from the Mexican Bobby number, the 442

Andersen - D

1 number, again, talking about the change in location.

2 Several minutes later, at 5:27 p.m., Placido
3 Ramirez-Coronel calls the Che number again. And then at some
4 time around that 5:30 p.m. time frame is when the traffic stop
5 occurs. And that's noted by the yellow line that says "traffic
6 stop."

7 After that, at 5:30 and 5:32 p.m., there are two
8 calls from Che, reaching out to Placido Ramirez-Coronel,
9 followed by 5:39 p.m., Sandoval-Ramos calling Ramirez-Coronel.
10 Followed by 5:39 p.m., Fabian Sandoval-Ramos then calls twice
11 out to Che, the 760 number, which is saved in his phone under
12 the name "G."

13 At 5:41 p.m. -- actually, I'm sorry. I take that
14 back. The phone calls -- the two calls that were placed were
15 not placed from the iPhone. They were placed from the 206
16 number that came from the dumpster.

17 At 5:41 p.m., two additional calls from the Che
18 number to Placido Ramirez-Coronel. And then 5:41 and 5:42
19 p.m., two more calls from Fabian Sandoval-Ramos's phone, that
20 was found in the dumpster, to the number saved as "Che" in
21 Placido Ramirez's phone. That was also saved as "G" in the
22 other Fabian Sandoval-Ramos phone.

23 Q. And in your summary, 129, is the exact phone that made the
24 call, is that included in that document?

25 A. Yes. The document includes the -- the time; as well as the

Andersen - D

1 length of the call in seconds; the originating phone number
2 itself; the destination number; and then the name, if any,
3 saved in the contact list, next to that.

4 Q. Below the yellow line on this page, the yellow line being
5 the traffic stop, was there the ability of Mr. Arcila or
6 Mr. Ramirez-Coronel -- were their phones able to be -- were
7 they able to take calls or place calls after the traffic stop?

8 A. No, their phones were kept from them.

9 Q. Okay. Have you seen this kind of pattern before?

10 A. Yes.

11 Q. And in your experience in the field, does this pattern
12 represent a type of organization?

13 A. Yes.

14 Q. What type?

15 A. Dispatch-runner organization.

16 Q. The events on April 2nd, were those events highly
17 controlled and done at law enforcement direction?

18 A. Yes.

19 Q. Did you observe this pattern, looking at the call records
20 from earlier in the month of March?

21 A. Yes.

22 Q. Did you have great control or observation over the events
23 prior to March 29th?

24 A. No.

25 Q. Given what you observed in this controlled day and time,

Andersen - X

1 were you able to find patterns similar, earlier in March?

2 A. Yes.

3 Q. Tell us about what you found, in terms of patterns.

4 A. So just as on April 2nd, when we did the controlled buy
5 where we seized 8 ounces in Milwaukie on March 31st, this same
6 call pattern was present.

7 Shane Baker would reach out to call Mexican Bobby to
8 place his order, and then Placido Ramirez-Coronel's phone would
9 receive a phone call from the number he had saved as Che.

10 Q. Not from the Mexican Bobby phone?

11 A. Not from the Mexican Bobby phone.

12 Q. That was on the 31st?

13 A. Correct.

14 Q. Did you see the pattern on any other dates in March?

15 A. Yes.

16 Q. What date?

17 A. March 22nd, March 24th, March 27th, and March 29th. Just
18 focusing on that week prior to -- I'm sorry -- to the death of
19 Justin Delong.

20 MS. BOLSTAD: Nothing further are on direct, your
21 Honor.

22 THE COURT: Mr. Andersen.

23 MR. ANDERSEN: Thank you.

24 CROSS-EXAMINATION

25 BY MR. ANDERSEN:

Andersen - X

706

1 Q. I'm going to look at just this demonstrative 129.

2 THE COURT: For the jury?

3 MR. ANDERSEN: I'm sorry. That is -- I believe that
4 has been admitted before the jury.

5 THE COURT: Yes. So if you're going to ask the
6 witness about it, display it to the jury, please.

7 Thank you.

8 Go ahead.

9 BY MR. ANDERSEN:

10 Q. And I'm on the second page there.

11 I'm just trying to make out -- now, this is a
12 summation that you said of -- of the toll records that you
13 compiled. Correct?

14 A. Yes.

15 Q. Now, for example, I've looked at -- it's the second -- if
16 you look in the green section of that part highlighted, I'm
17 looking at the second part, 4-2-14 at 17:39.

18 A. Yes.

19 Q. And it says it's a 34-minute -- or a 34-second call.

20 Right? Would you agree with that?

21 A. Yes. There's two records that reflect that call. The one
22 that you referenced that says 34 seconds and the one that's
23 directly above it.

24 So in red, where it says, Call placed from 206 to the
25 360 and the word -- the word "Faby" is next to it, in quotes,

Andersen - X

1 that's the phone as it was reflected on Placido's phone.

2 The call, as it's reflected on Fabian
3 Sandoval-Ramos's and on the tolls from the 260 number -- sorry,
4 the 206 number, show it as a 34-second call.

5 So if you imagine, on Fabian Sandoval-Ramos's end, on
6 the 206 line, as you dial a number and it rings and it rings
7 and it rings and no one answers, there's a time elapse there.

8 On the records from Placido's phone, it just shows as
9 a missed call. So there was no time length captured because
10 his phone doesn't reflect it as a call that any length of time
11 was captured on because he never answered it.

12 Q. Okay. So it sounds to me like these numbers -- the
13 duration numbers don't necessarily coincide with any actual
14 call. You could -- in this situation, you have 34 seconds.
15 But it was never actually a call --

16 A. Yeah. If you're placing the call and there's time elapsed
17 while the phone is ringing or going to voice mail, there's an
18 elapsed time recorded by the phone company, there, to bill you
19 for those minutes.

20 If you're a person who has a device and the device
21 just rings and rings and you never answer it, your phone just
22 marks that as a zero-second call that you never answered. So
23 that's what the difference is between those two.

24 Q. Okay. So if you're calling me, my phone might say zero, if
25 I just let it ring forever, and your phone might say --

Andersen - X

1 A. The elapsed time it was ringing.

2 MR. ANDERSEN: Sorry. Did you get my question?

3 THE COURT REPORTER: Yes.

4 BY MR. ANDERSEN:

5 Q. And I think your answer was yes?

6 A. It was the elapsed time it was ringing, yes.

7 Q. Maybe for clarity's sake, I should re-ask that.

8 Just to clarify, if -- for example -- you wanted to
9 call me and -- and I just let it ring -- I'm sure I wouldn't do
10 that if I knew you were calling. But my phone might say zero,
11 and your phone might say 200 seconds, or however long?

12 A. Probably not 200, unless I was leaving a really long voice
13 mail, begging you to call me back.

14 Q. Or just -- or if I didn't have an answering machine, or for
15 whatever reason --

16 A. Exactly.

17 Q. So -- I mean, it sounds to me like the numbers don't
18 necessarily coincide with any particular length of time of a
19 call necessarily. Right?

20 A. If they're provided from the phone company, they typically
21 would because they're produced in a way that allows the phone
22 company to bill for minutes of air time that are used.

23 So if there are records that were drawn from a phone
24 download, that would be a different case. But the records that
25 are toll specific would have a more accurate reflection of

Andersen - X

1 number of seconds elapsed.

2 Q. Well, but it did, when we already figured out that this 34
3 is not accurate. Right?

4 A. Well, we would assume -- or we would infer that that's 34
5 seconds where the phone calling from the dumpster is ringing
6 and ringing and ringing for 34 seconds, as the phone is never
7 answered on the other end.

8 Q. Right. So in terms of actual talk time, that 34 doesn't
9 have anything necessarily to do with any sort of talk time, is
10 what I'm asking.

11 A. I don't know whether the phone company bills on talk time
12 or just open line time.

13 Q. Well, I'm not talking about billing. I'm just saying, if
14 we look at this same one we've been looking at, 34 seconds
15 doesn't mean that anybody talked to anybody else for 34 seconds
16 while on the phone line?

17 A. Correct. It means that that line was open for 34 seconds,
18 according to Verizon.

19 Q. Right. So my question -- I -- I think you've answered this
20 a couple of times, but I'm not clear on the answer.

21 That 34 seconds is not tied to a specific talk time
22 of anybody talking. Right?

23 A. It's tied to an open line time, if -- you could put it that
24 way.

25 Q. Okay. Would you answer my question yes or no?

Andersen - X

1 A. Rephrase your question. I'm sorry.

2 Q. Well, my question is does the -- the 34 seconds is not tied
3 to a talk time. Right?

4 A. In this particular instance, no.

5 Q. Okay. So we can assume that all of the other numbers
6 aren't necessarily tied to a talk time. They might be tied to
7 an open line time, which might also indicate that there was
8 talking going on, but not necessarily. Right?

9 A. Well, I think it would depend on the context. Like if we
10 have calls where Mr. Baker is on the phone and we know we
11 observe those, we know that those are meaningful talk time
12 conversations.

13 Q. Well, not necessarily a message situation either, right?

14 If we know Mr. Baker is calling somebody and you know
15 he's talking, you're not sitting there with stopwatch, timing
16 how long he's talking necessarily, are you?

17 A. Well, if we could play a recording of a call that was made,
18 we could compare it to the length of time the call was open on
19 the phone tolls, and that would give us an idea of how much
20 time has elapsed.

21 Q. Okay. All right. All right.

22 Let's see. I think that's all of the questions I
23 have on that particular subject.

24 Now, I mean, this is clear, but you can't necessarily
25 tell who's talking on the phones just by looking at the phone,

Andersen - X

1 right --

2 THE COURT REPORTER: I need you to slow down, please.

3 THE COURT: You really must slow down.

4 And it is the end of the day, and we do want to wrap
5 up the witness. But this is obviously very important material
6 for you to clarify, so take it slower.

7 MR. ANDERSEN: Thank you.

8 BY MR. ANDERSEN:

9 Q. This should be a simple question.

10 You can't necessarily tell, just by looking at the
11 phone records, if any particular person was the particular
12 person actually using the phone. Right?

13 A. Exactly. By the phone records alone, you couldn't be sure.

14 Q. If I may, I'm going to switch gears.

15 And I'm going to show you an exhibit that I believe
16 is going to be Defense 207. I think that's where we're up to.

17 (Pause, conferring.)

18 THE COURT: Is that the next in order, Mr. Sepp?

19 MR. SEPP: I think it's '08.

20 MR. ANDERSEN: '08?

21 MR. SEPP: Yeah, should be 2008 (phonetic).

22 THE COURT: 208.

23 MR. SEPP: 208.

24 MR. ANDERSEN: Thank you.

25 MS. COOKE: It is.

Andersen - X

1 MR. ANDERSEN: Thank you.

2 BY MR. ANDERSEN:

3 Q. Well, first of all, are you familiar with just general jail
4 booking records, and things of that nature?

5 A. Generally.

6 Q. Could you look at that, and can you identify that? That
7 first page of that exhibit?

8 A. Yeah. It looks to be a summary of the Clackamas County
9 receipt for a defendant which, in this case, is listed as
10 Placido Ramirez-Coronel. And it has a date and time of May
11 27th, 2014, at 4:56 p.m.

12 And it lists a citizen adjacent to Placido's name of
13 Magdalena Ramirez-Coronel, with an address in Ukiah, and an
14 amount posted of bail of 15,000 dollars, with some additional
15 notes of a date to appear in court.

16 Q. Okay. And were you actually -- were you involved in
17 this -- in this transaction at all? Are you familiar with this
18 actual transaction? The paying of bail?

19 A. Yes.

20 MR. ANDERSEN: Your Honor, I would like to admit
21 Defense 208.

22 THE COURT: Any objection?

23 MS. BOLSTAD: No objection.

24 MR. SEPP: No objection.

25 THE COURT: 208 is received, may be published.

Colloquy

713

1 Please proceed.

2 MR. ANDERSEN: I don't have any particular questions
3 or any particular other questions about this piece of evidence.
4 But --

5 THE COURT: All right. Go on with your -- conclude
6 your cross, please.

7 MR. ANDERSEN: That is all of the cross that I have.
8 Thank you.

9 THE COURT: Thank you.

10 Mr. Sepp.

11 MR. SEPP: I have nothing for this witness, your
12 Honor.

13 THE COURT: Redirect, Ms. Bolstad.

14 MS. BOLSTAD: Nothing, your Honor. Thank you.

15 THE COURT: Subject to confirming the receipt of your
16 exhibits, does the Government rest?

17 MS. BOLSTAD: The Government does rest.

18 THE COURT: All right. So, jurors, let me just give
19 you the plan for tomorrow.

20 You've heard all of the evidence you're going to hear
21 from the Government in its case-in-chief. I need to confer
22 with the parties outside your presence after you leave for the
23 day to determine whether the defendants are going to offer
24 any evidence.

25 Remember, they don't have to. Neither has any burden

Colloquy

714

1 to prove innocence, and they don't have any burden to offer
2 witnesses. But they also have the right to do that. So I'm
3 going to get that worked out tonight.

4 We're also going to finish our work regarding those
5 jury instructions and the verdict form.

6 Tomorrow, you'll either have some evidence -- some
7 more evidence or you won't. But once that evidence is
8 concluded, I will move directly to the jury instructions. And
9 I will review with you the legal framework, the verdict forms,
10 so that when you hear the lawyers' closing arguments, you can
11 understand where they fit in the legal context. Please don't
12 make any lunch plans for tomorrow. The Court will provide you
13 lunch. We'll have menus waiting for you when you come. And my
14 reason for that is to just respect your time as much as
15 possible. We may have to take a lunch break during arguments
16 and to ensure that we don't take any longer than necessary,
17 we'll have lunch for you here so it doesn't -- we can kind of
18 condense that travel time.

19 And then once the arguments are finished, and I have
20 just a brief follow-up of an instruction, then the case will
21 come to you.

22 There isn't any right or wrong amount of time to
23 deliberate, and I can't predict for you how long that will be.

24 It will be up to you tomorrow -- well, let me first
25 make the point, Mr. Dahl, assuming everyone stays well and is

Colloquy

1 here when the case goes into deliberation, then we'll be
2 separating you from your fellow jurors under my instruction
3 that you not talk about the case with anyone until you hear
4 further word from me.

5 If it became necessary during the jury's
6 deliberations because someone couldn't finish, then you would
7 be called in to service. All of the 12 jurors would have to
8 start deliberating anew because all 12 have to agree on the --
9 on the verdict based on a consideration of the evidence in your
10 presence.

11 So for you, once -- once the jury goes out, I'll give
12 you some instructions. You'll be free to leave the building,
13 but we need you in a position where you could return, if
14 necessary.

15 The jurors who do begin deliberation, your first duty
16 will be to pick one of the 12 to be your presiding juror,
17 basically your spokesperson here in court, to speak with me
18 about the verdict and so -- so forth.

19 If -- once the case gets to you in the afternoon --
20 all 12 of you decide there's not enough time to complete the
21 process, then we'll recess at the normal hour unless all 12 of
22 you vote to stay; in which case, we will stay with you if
23 that's what you want to do.

24 But I also don't want to create any expectation that
25 you must stay past the normal close of business on Friday,

Colloquy

716

1 after a long and intense review over a lot of information. It
2 will be up to you.

3 If you do find, in the time available, that you are
4 able to return a complete verdict on all matters, then we'll
5 deal with it. If you're not, then we'll recess you for the
6 weekend, to have you come back for deliberation on Monday
7 morning, and so forth. So I wanted to give you an idea just
8 what to expect time-wise.

9 It will help if we start a little earlier with you
10 tomorrow, and I know traffic is just crazy right now.

11 Let's try to have you in the room at 8:45, traffic
12 permitting your arrival then. You'll find menus, as I say,
13 when you get here in the morning. Please fill them out before
14 you come into court, so we can make those arrangements.

15 Questions, jurors? Any of you, about those
16 logistics?

17 Okay. Notes on the chair.

18 Do not talk about the case, do any research, let
19 anything about its issues cross your paths tonight.

20 Please, really, just relax. And tomorrow we'll be
21 ready to go forward for the last presentation of any evidence
22 you're going to hear. Don't know what that will be, but I'll
23 be ready for instructions as soon as that decision is announced
24 to you. All right?

25 All right. Everyone please rise for the jury.

Colloquy

717

1 (Jurors exit, 4:52 p.m.)

2 THE COURT: All right. Let's be seated.

3 I need to find out whether -- well, first of all,
4 there are a number of things that have to -- to be accomplished
5 before tomorrow morning.

6 I want to ensure that all of the exhibits the parties
7 expect are in evidence, are in evidence. And so you're going
8 to need to work through that so that someone can make a
9 confirming statement to me.

10 It is your responsibility to double-check the clerk's
11 list, to ensure that that which you believe is in evidence is
12 and to confirm that the exhibits that do go to the jury are in
13 fact evidence. You need to do that double-checking.

14 I want to focus now on whether the defendants, either
15 of them, have any evidence to offer.

16 Mr. Andersen, will you be offering any evidence
17 beyond what you already have, on behalf of Mr. Sandoval-Ramos?

18 MR. ANDERSEN: No, I don't believe so.

19 THE COURT: All right. Mr. Sepp?

20 MR. SEPP: No, your Honor.

21 THE COURT: All right.

22 So, Mr. Sandoval and Mr. Sepp [sic], I need to speak
23 with you now about this right that you have not to testify or
24 the right to take the witness stand in your own defense if you
25 wish to do so.

Colloquy

718

1 Each of your lawyers have just reported that you will
2 not be calling other witnesses and neither of you wishes to
3 testify. This is your absolute right. The jury cannot infer
4 from your decision not to offer evidence or your own testimony
5 anything negative, and I will be telling them that.

6 On the other hand, the right to testify is also your
7 right.

8 It does not belong to your lawyer, Mr. Arcila.

9 It does not belong to your lawyer,
10 Mr. Sandoval-Ramos. It is your personal rights.

11 And even if your lawyers have talked to you about
12 this and pointed out to you that there may be risks if you take
13 the witness stand in your own defense, particularly in
14 cross-examination by the Government's lawyers, in the end it's
15 your choice.

16 And if either of you wishes to testify even over the
17 advice to the contrary by your lawyer, I will give you that
18 opportunity because it is your right.

19 Mr. Sandoval, do you understand?

20 DEFENDANT SANDOVAL-RAMOS: (Nods head.)

21 THE COURT: Answer out loud?

22 THE DEFENDANT THROUGH THE INTERPRETER: Yes.

23 THE COURT: Mr. Arcila, do you understand?

24 DEFENDANT ARCILA: Yes, your Honor.

25 THE COURT: All right. And so knowing that,

Colloquy

719

1 gentlemen, do each of you choose not to testify in this case in
2 your trial?

3 Mr. Arcila?

4 DEFENDANT ARCILA: I do not, your Honor.

5 THE COURT: You do not want to testify?

6 DEFENDANT ARCILA: No, your Honor.

7 THE COURT: All right. So you are choosing not to
8 testify?

9 DEFENDANT ARCILA: Correct, your Honor.

10 THE COURT: Mr. Sandoval, same question.

11 Are you choosing not to testify?

12 THE DEFENDANT THROUGH THE INTERPRETER: Yes.

13 THE COURT: Gentlemen, have you had enough time to
14 talk to your lawyers about this important decision?

15 Mr. Arcila?

16 DEFENDANT ARCILA: Yes, your Honor.

17 THE DEFENDANT THROUGH THE INTERPRETER: Yes.

18 THE COURT: And you're sure, each of you, that this
19 is what you want to do?

20 DEFENDANT ARCILA: Yes, your Honor.

21 THE DEFENDANT THROUGH THE INTERPRETER: Yes.

22 THE COURT: Because if you are found guilty, any
23 argument you make later that somehow you were prevented from
24 testifying, it would be inconsistent with what you're telling
25 me now. So I want to be certain this is in fact your personal

1 final decision.

2 Is it, Mr. Arcila?

3 DEFENDANT ARCILA: Yes, your Honor.

4 THE DEFENDANT THROUGH THE INTERPRETER: Yes.

5 THE COURT: All right. I'm satisfied each of the
6 defendants is fully advised and competent and each is making a
7 knowing, intelligent, and voluntary waiver of -- not a waiver
8 but choosing to stand on each's right to remain silent.

9 And so with that, all of the evidence is in, subject
10 again to confirming the receipt of exhibits.

11 I'm also going to reserve at this time any motions
12 the defendants wish to make for judgment of acquittal as a
13 matter of law.

14 In my view, the evidence, when viewed in the light
15 most favorable to the Government on each of the four counts, is
16 sufficient for the case to go to the jury. If either defendant
17 wishes to make a formal motion, you can tell me that you make
18 the motion now and we will argue it after the case goes to the
19 jury.

20 But I believe time is of the essence, so that we are
21 ready to get the case to the jury. After tracking the evidence
22 carefully, it is a circumstantial evidence case and a direct
23 evidence case. And the jury has many inferences to draw in a
24 network of a number of overlapping facts that may or may not be
25 sufficient to convince them beyond any reasonable doubt. But

Colloquy

721

1 if I view only the inferences in favor of the Government, which
2 I'm required to do in response to such a motion, if I only look
3 at the evidence that supports the Government's theories, I'm
4 satisfied that rational jurors could and -- could find beyond
5 any reasonable doubt that each of the defendants is guilty of
6 the charges brought against them.

7 I'm not making any comment on these special verdict
8 questions we've been working through, but a motion for judgment
9 of acquittal would not be affected by a special verdict
10 question. These have to do with quantities and factors.

11 So if either lawyer wants to reserve the opportunity
12 to make the motion later, you may. But that's my view of how
13 we need to use our time right now.

14 Mr. Andersen?

15 MR. ANDERSEN: Your Honor, I would certainly like to
16 take the opportunity to reserve that right, but I understand
17 the Court's ruling on that.

18 THE COURT: All right.

19 MR. SEPP: I would also like to reserve.

20 THE COURT: All right. We'll consider the motions
21 made and tentatively denied and allow -- which allows each
22 lawyer an opportunity to review the matter again with me on the
23 record once I get the case to the jury.

24 All right. So we need to work through jury
25 instructions. I know you all must be quite fatigued. I am,

Colloquy

722

1 and I've only been listening. This has been a very
2 detail-laden day.

3 The options I suggest are the following. First, you
4 now have draft 3 of a verdict form and draft 5 of jury
5 instructions.

6 One option is for you to take those and work with
7 them among yourselves or via e-mail, and the like, so that when
8 we are first together in the morning, we can work through any
9 additional issues.

10 Another option is for us to take a recess and then
11 resume in about 30 minutes, when you've had an opportunity for
12 a break, and we can work through the matters tonight.

13 In that -- that second option, if either or both of
14 the defendants wish not to be part of the discussion around
15 law, so that they can leave, that would be fine. They could
16 waive their appearance. But, as I say, I'm satisfied to do
17 this first thing in the morning when everyone is fresh. But we
18 do need to move quickly at that point so that I can settle the
19 instructions, after hearing any final arguments you have about
20 the matter.

21 We'll take out the defendants -- I think the only
22 option in the instruction right now is defendants not
23 testifying so that would stand, but I'll double-check that.

24 And then I wouldn't print a final version of the
25 instructions until tomorrow morning, once we've talked through

Colloquy

1 all of the issues on the record, which I would like to do at
2 eight o'clock.

3 Can the marshals have the defendants here at eight
4 o'clock, to report?

5 THE MARSHAL: Yes, your Honor.

6 THE COURT: And, Mrs. LeGore, can you be on the
7 record at eight o'clock?

8 THE COURT REPORTER: Yes.

9 THE COURT: Mr. Minetto, can we be on the record at
10 eight o'clock?

11 THE CLERK: No problem.

12 THE COURT: So option 1 or option 2? Recess now and
13 pick up the final discussion tomorrow morning?

14 You're not going to get a -- a pristine set of
15 instructions, then, until we're finished. But most of the
16 other things are not in contest, if you want to copy them or
17 use them for your closing arguments.

18 MR. SEPP: I prefer to get it done tonight.

19 THE COURT: Okay.

20 MR. SEPP: That's my vote.

21 MS. BOLSTAD: I would as well, your Honor.

22 THE COURT: All right. Two to one, that's it. We'll
23 stay.

24 Now, please speak with your clients about whether
25 they want to be here.

Colloquy

1 MR. SEPP: My client wishes to not stay.

2 THE COURT: Okay.

3 MR. SEPP: Just to leave.

4 (Pause, Mr. Andersen and Defendant Sandoval-Ramos
5 conferring.)

6 MR. ANDERSEN: Your Honor, I have just discussed with
7 Mr. Sandoval. I believe he would like to be excused from the
8 jury instructions debate.

9 THE COURT: All right.

10 So, gentlemen, again you have a right to be here.
11 But if you're telling me you're tired, you would rather not
12 stay and -- tomorrow morning, I'll review with you what was
13 decided. You're free to go.

14 Is that your choice, Mr. Arcila?

15 DEFENDANT ARCILA: Yes, your Honor.

16 THE COURT: Sir, is that your choice?

17 THE DEFENDANT THROUGH THE INTERPRETER: Yes, your
18 Honor.

19 THE COURT: So the defendants are excused with the
20 waiver of appearance just made from the jury instructions
21 conference we're going to have.

22 We are going to take a break.

23 Mrs. LeGore is -- has been working all afternoon. We
24 can go off the record. But let me ask a question off the
25 record before you leave the room.

Colloquy

725

(Off-the-record discussion.)

THE COURT: Okay. So back on the record.

I've suggested to counsel that we have our final instructions conference mostly off the record. That we excuse Mrs. LeGore for the evening. And then tomorrow morning we can put on the record any issues that need to be preserved about exceptions or corrections or additions, which we'll do first thing at eight o'clock tomorrow morning.

That said, Mrs. LeGore, you are free to go and we are off the record.

(Off-the-record discussion.)

(Court adjourned.)

--oOo--

I certify, by signing below, that the foregoing is a correct stenographic transcript of the oral proceedings had in the above-entitled matter this 2nd day of June, 2016. A transcript without an original signature or conformed signature is not certified. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/S/ Amanda M. LeGore

AMANDA M. LeGORE, CSR, RDR, CRR, FCRR, CE
CSR No. 15-0433 EXP: 3-31-2018